(10)

No. 97-2044

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

OCTOBER TERM, 1998

UNITED STATES OF AMERICA, PETITIONER

v.

HAGGAR APPAREL COMPANY

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED: JUNE 18, 1998
CERTIORARI GRANTED: SEPTEMBER 29, 1998

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UNITED STATES COURT OF
INTERNATIONAL TRADE

Docket No. 93-06-00343

HAGGAR APPAREL COMPANY, PLAINTIFF

v.

UNITED STATES, DEFENDANT

DOCKET ENTRIES

DOCKET NUMBER	DATE	PROCEEDINGS
1993		
(1)	Jun 16	Summons filed. wc
(2)	Jun 21	Motion by Pltf to amend the summons. vad
(3)	Jun 21	Complaint by pltf. vad
(4)	Aug 9	Motion by Deft for EOT until 8/30/93 to respond to Pltf's motion to amend the summons w/consent to Pltf. vad
(5)	Aug 10	Order Granting Deft's consent motion for EOT until 08/30/93.

DOCKET NUMBER	DATE	PROCEEDINGS
(6)	Aug 19	Deft noted their consent to pltf's motion to amend the summons. vad
(7)	Aug 27	Pltf's motion to amend summons GRANTED. sg
(8)	Sep 29	Deft filed consent motion for EOT until Oct 23/93 to answer Pltf's complaint. sg
(9)	Sep 30	Defts' consent motion for EOT until Oct 23/93 (8) GRANTED. sg
(10)	Oct 25	Answer filed by Deft. smw
(11)	To Wit Nov 23	Motion by Pltf for EOT until 1/28/94 to respond to Deft's first set of interrogatories. w/consent of Deft. vad
(12)	Nov 30	Order Granting Pltf's motion for EOT until 01/29/94. vad
1994		
(13)	Jan 3	Assigned to Chief Judge DiCarlo. jp

DOCKET NUMBER	DATE	PROCEEDINGS
(14)	To Wit Jan 25	Pltf filed consent motion for EOT until 02/28/94 to respond to Deft's first interrogatories. smw
(15)	Feb 07	Pltf's consent motion for EOT until 02/28/94 to Respond to Deft's First Interrogatories GRANTED. jp
(16)	To Wit Feb 25	Pltf filed consent motion for EOT until Mar 31/94 which to serve a response to Deft's first interrogatories and request for production.
(17)	Mar 4	Pltf's consent motion for EOT until Mar 31/94 to serve a response to Deft's first interrogatories and request for production GRANTED. No further extensions will be granted.
(18)	To Wit Mar 4	Pltf filed proposed scheduling order. smw

DOCKET NUMBER	DATE	PROCEEDINGS
(19)	Mar 18	SCHEDULING ORDER: Discovery shall be completed by Oct 1/94; All dispositve motions or request for trial shall be filed by Nov 15/94; Trial shall take place on Jan 15/95 at a time and place to be announced at a later date. jp
(20)	Mar 25	Parties filed proposed stipulation and protective order. sg
(21)	Apr 1	Proposed Stipulation and Protective Order GRANTED. jp
(22)	Sep 19	Deft filed consent motion for EOT until 10/22/94 to respond to Pltf's discovery. smw
(23)	Sept 23	Deft's consent motion for EOT until 10/22/94 to respond to Pltf's discovery GRANTED. jp
(24)	To Wit Oct 3	Pltf filed consent motion for EOT until Nov 30/94 to conduct discovery. sg

DOCKET NUMBER	DATE	PROCEEDINGS
(25)	Oct 17	Pltf's consent motion for EOT until Nov 30/94 to conduct discovery GRANTED. JP
(26)	To Wit Oct 25	Pltf filed request for trial to be held on or about Jan 24-26/95 at Dallas Texas. sg
(27)	To Wit Oct 25	Pltf filed consent motion to designate as a test case. sg
(28)	Nov 4	Pltf's consent motion to designate (#27) GRANTED ORDERED. This case is designate as a test case. smw
(29)	Dec. 5	ORDERED that the trial in this action will begin on January 24 1995 at Dallas Texas. jp
1995		
(30)	Jan 13	Pltf filed pretrial brief (CONFIDENTIAL). ats
(31)	Jan 13	Deft filed pretrial memorandum. ats

DOCKET NUMBER	DATE	PROCEEDINGS
(32)	Jan 19	Parties filed proposed Pre-Trial order. ats
(33)	Jan 20	Pltf filed Pretrial Brief (PUBLIC VERSION). jp
(34)	To Wit Jan 20	Pltf filed Pretrial Brief. [Public]. sg
(35)	Feb 7	Transcript filed of trial held on 1-24-95 in Dallas, TX. ats
(36)	Feb 7	Transcript filed of trial held on 1-25-95 in Dallas, TX. ats
(37)	To Wit Mar 6	Pltf. field consent motion for EOT until 3/23/95 to file its post trial brief.
(38)	Mar 13	Parties filed stipulated facts.
(39)	Mar 17	Pltf's consent motion for EOT until Mar 23/95 to file its post trial brief GRANTED. jp
(40)	To Wit Mar 23	Pltf filed Post Trial Brief. sg

DOCKET NUMBER	DATE	PROCEEDINGS
(41)	Apr 27	Deft filed consent motion for EOT to respond to Pltf's brief. ws
(42)	May 3	Deft's consent motion for EOT until May 27/95 to respond to Pltf's Brief GRANTED. jp
(43)	May 30	Deft filed consent motion for EOT until Jun 6/95 to respond to Pltf's brief GRANTED. sg
(44)	Jun 1	Deft's consent motion for EOT until Jun 6/95 to respond to Pltf's brief GRANTED. jp
(45)	Jun 6	Deft filed post trial brief. ws
(46)	Jun 23	Pltf filed consent motion for EOT until Jul 10/95 to file its post-trial brief. ws
(47)	Jul 6	Pltf's consent motion for EOT until Jul 10/96 to file its Post-Trial Reply Brief GRANTED. jp

DOCKET NUMBER	DATE	PROCEEDINGS
(48)	To Wit: Jul 10	Pltf filed motion for EOT until Jul 20/95 to file its post-trial brief. ws
(49)	Jul 21	Pltf's motion for EOT until July 20, 1995 to file it post-trial brief GRANTED.
(50)	Jul 21	Pltf filed Post -Trial Reply Brief. sg
(51)	Aug 8	Deft field consent motion for leave to file a sur-reply. ws
(52)	Aug/21	Pltf Haggar's filed its response to deft's consent motion for leave to file a sur-reply brief and memorandum of alw. jro
1996		
(53)	Jan 25	Joint Stipulation filed for Revised Selected Costs and Times Pursuant to Question 3A in the Court's 12/27/95

DOCKET NUMBER	DATE	PROCEEDINGS
(54)	Jan 26	DOJ filed letter in response to your Honor's letter of 12-27-95, where the court requested the parties to address four questions that were raised as a result of parties' briefs. ws
(55)	Jan 29	Pltf filed response to the Court's questions contained in your Honor's 12-27-95 letter. ws
(56)	Feb 05	Deft's consent motion for leave to file a sur-reply (#51) GRANTED. jpr
(57)	Feb 05	Deft filed Sur-Reply Brief to Pltf's Brief. jpr
(58)	Feb 05	Joint Stipulation for Revised selected costs and times pursuant to questions 3A in the Court's December 27/95 request GRANTED. jpr
(59)	July 12	Slip op. 96-110 Judgment for Plaintiff. st

DOCKET NUMBER	DATE	PROCEEDINGS
(60)	Jul 19	Pltf filed motion to amend judgement order (re: Slip. Op. 96-110).
(61)	July 26	Pltf's motion to amend the judgment order GRANTED.
(62)	July 26	AMENDED JUDGMENT ORDER: ORDERED that Customs grant a duty allowance under TSUS item 807.00 and HTSUS subheading 9802.00.80, for Haggar's Model 245 men's pants, fabric style 2010; and it is further ORDERED that the US Customs Service shall reliquidate the entries accordingly and shall refund all excess duties with interest as as provided by law. ORDERED that the action is DISMISSED. jpr
(63)	Sep 9	Deft filed Notice of Appeal. ws
(64)	Oct 7	CAFC issued Docket No. 97-1002 on Oct 1/96. jpr

COURT OF INTERNATIONAL TRADE
FOR THE FEDERAL CIRCUIT

No. 97-1002

HAGGAR APPAREL COMPANY, PLAINTIFF

v.

UNITED STATES, DEFENDANT

DOCKET ENTRIES

DOCKET NUMBER	PROCEEDINGS
1.	CERTIFICATE OF INTEREST FOR THE APPELLANT. (MS-10/10/96) FILED: 10/11/96. (EOD 10/11/96 BY FD.)
2.	APPELLANT -- CONSENT MOTION FOR THIRTY DAY ENLARGEMENT OF TIME TO FILE BRIEF. (MPF) (MS-11/12/96) FILED 11/13/96. ON CONSENT. ACTION ON MOTION (3): GRANTED. BY CLERK. FILED: 11/13/96. (EOD 11/13/96 LP) THE BRIEF IS DUE ON 12/30/96. 97-1002
3.	Appellant - CONSENT MOTION FOR EXTENSION OF TIME FOR 16-DAYS TO FILE BRIEF. (MS-12/12/96) FILED: 12/13/96. ON CONSENT. ACTION ON MOTION (5: GRANTED BY CLERK. FILED 12/13/96. (EOD 12/13/96 BY LP) THE BRIEF IS DUE ON 01/15/97. 97-1002

DOCKET NUMBER	PROCEEDINGS
	U.S. [APPELLANT] - BRIEF FOR APPELLANT, THE U.S. (MS-01/10/97). FILED: 01/10/97. [972810] (EOD 01/23/97 BY AW) 97-1002
5.	Appellee - CONSENT MOTION FOR THIRTY DAY EXTENSION OF TIME TO FILE REPLY BRIEF. (MS-02/13/97) FILED: 02/14/97. ACTION ON MOTION (7): GRANTED. BY CLERK. FILED 02/14/97. (EOD 02/14/97 BY LP) THE BRIEF IS DUE ON 03/26/97. 97-1002
8.	Appellee -- CONSENT MOTION TO EXTEND TIME TO FILE ITS BRIEF BY 14-DAYS. (MS-03/25/97) FILED: 03/25/97. ON CONSENT. ACTION ON MOTION (9): GRANTED. BY CLERK. FILED: 03/26/97. (EOD 03/26/97 BY LP) THE BRIEF IS DUE ON 04/09/97. 97-1002
10.	Appellant - CONSENT MOTION FOR 14-DAY ENLARGEMENT OF TIME TO FILE ITS REPLY BRIEF. (MS-04/10/97) FILED: 04/11/97. ON CONSENT. ACTION ON MOTION (11): GRANTED BY CLERK. FILED: 04/11/97. (EOD 04/11/97 BY LP) THE BRIEF IS DUE ON 05/13/97. 97-1002

DOCKET NUMBER	PROCEEDINGS
	HAGGAR APPAREL CO. [APPELLEE] - BRIEF OF APPELLEE, HAGGAR APPAREL CO. (MS-04/09/97). RECEIVED: 04/10/97. REJECTED: 04/24/97. CORRECTED BRIEF DUE: 05/08/97. [973555] (EOD 04/24/97 BY SPP) 97-1002
	HAGGAR APPAREL CO. [APPELLEE] - CORRECTED BRIEF OF APPELLEE, HAGGAR APPAREL CO. (MS-05/07/97). CORRECTED BRIEF RECEIVED: 05/07/97. FILED: 04/09/97. [973555] (EOD 05/12/97 BY JLA) 97-1002
	US [APPELLANT] - REPLY BRIEF FOR APPELLANT, THE UNITED STATES (MS-05/08/97). FILED: 05/08/97. [973746] (EOD 05/21/97 BY SPP) 97-1002
	US [APPELLANT] - JOINT APPENDIX (MS-05/15/97). FILED: 05/15/97. (973747) (EOD 05/21/97 BY SPP) 97-1002
	AFFIRMED. PRECEDENTIAL OPINION BY: J. RICH. JUDGMENT ENTERED: 10/22/97. COSTS AGAINST APPELLANT. (EOD 10/22/97 BY KSH) 97-1002

DOCKET NUMBER	PROCEEDINGS
13.	Appellant - MOTION FOR STAY OF MANDATE AND TO EXTEND TIME TO FILE A PETITION FOR REHEARING WITH OR WITHOUT A SUGGESTION FOR REHEARING EN BANC. (MS-11/24/97) FILED: 11/25/97. ACTION ON MOTION (14): GRANTED. REHEARING WITH OR WITHOUT SUGGESTION IS DUE JAUARY 7, 1998. BY MERITS PANEL. FILED: 12/02/97. (EOD 12/02/97 BY LP) 97-1002
	MANDATE ISSUED TO THE CIT: 12/15/97. (EOD 12/15/97 BY JCW) 97-1002
	DECEMBER 19, 1997 15. The mandate having been issued in error, it is ORDERED that the mandate be, and the same hereby is, RECALLED. cod by ksh on 12/19/97. 97-1002
	APPELLANT - COMBINED PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC (MS-01/07/98) FILED: 01/07/98 PETITION CIRCULATED: 01/09/98 SUGGESTION CIRCULATED: 01/22/98 RESPONSE REQUESTED FROM: APPELLEE (HAGGAR APPAREL CORP.) RESPONSE DUE: 02/09/98 RESPONSE FILED: 02/09/98 RESPONSE CIRCULATED: 02/09/98 PETITION/SUGGESTION: DENIED/ DECLINED ON 02/20/98. (EOD 02/20/98 BY ANT) 97-1002

DOCKET NUMBER	PROCEEDINGS
	MANDATE ISSUED TO THE CIT: 02/27/98. (EOD 02/27/98 BY LRP) 97-1002
	PETITION FOR WRIT OF CERTIORARI FILED 06/18/98, SUPREME COURT 1: 97-2044. (EOD 06/25/98 BY JW) 97-1002
	PETITION FOR WRIT OF CERTIORARI FILED 06/18/98, SUPREME COURT 1: 97-2044. CERT. GRANTED ON 09/29/98. (EOD 10/09/98 BY JW) 97-1002

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UNITED STATES COURT OF
INTERNATIONAL TRADE

Docket No. 93-06-00343

HAGGAR APPAREL COMPANY, PLAINTIFF

v.

UNITED STATES, DEFENDANT

COMPLAINT

COMES NOW Haggar Apparel Company, plaintiff in the above-styled cause, by and through its undersigned attorneys, and alleges as follows:

1. This is a civil action contesting the denial of a protest by the United States Customs Service ("Customs").

2. Jurisdiction over this action is vested in this Court by 28 U.S.C. §1581(a).

3. Plaintiff is the real party in interest in this action and is the proper party plaintiff since it (i) filed the protest which is the subject of this action, (ii) is the immediate parent company of the importer, Corsicana Company, (iii) is the party which paid the duties on behalf of the importer of record, (iv) was the owner of the imported merchandise, (v) is the party which paid for the imported merchandise from the foreign assembler, Haggermex, S.A. de C.V., plaintiff's second-tier subsidiary, and (vi) is the party which owned and

exported the fabric components from which the imported merchandise was made. Plaintiff has standing to sue under 28 U.S.C. §2631(a).

4. The protest which underlies this action was timely filed.

5. All liquidated duties have been paid.

6. The merchandise at issue certain men's trousers (hereinafter "trousers"), either 100 percent woven cotton or 60 percent cotton and 40 percent polyester, assembled in Mexico by plaintiff's second-tier subsidiary, Haggarmex, S.A. de C.V.

7. The decision contested in this action is the assessment of duty by Customs at the rate of 16.5 percent ad valorem under TSUS item 381.6240, and at the rate of 17.7 percent ad valorem under HTSUS subheading 6203.42.40, depending upon the date of entry, on values for the imported trousers which included the values or costs of the cut-to-shape fabric components of the imported merchandise.

8. Plaintiff claims than in assessing duty on the subject merchandise, Customs should have deducted the cost or value of all cu-to-shape fabric components under the provisions of TSUS item 807.000, or HTSUS subheading 9802.00.80, depending on the date of entry.

9. The imported trousers were assembled abroad in whole or in part of fabricated components, the product of the United States.

10. The cut-to-shape fabric components were exported from the United States in condition ready for assembly without further fabrication.

11. The cut-to-shape fabric components did not lose their physical identities in the imported merchandise by change in form, shape or otherwise.

12. The cut-to-shape fabric components were not advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting.

13. Customs allowed TSUS item 807.00 or HTSUS subheading 9802.00.80 treatment on the subject entries for the United States fabricated components other than the cut-to-shape fabric components.

14. The fabric used to make fabric components for the trousers was made in the United States.

15. The fabric was cut to shape in the United States by Haggar at its plant in Weslaco, Texas.

16. Fabric which is cut to shape in the United States constitutes a fabricated component, the product of the United States, which qualifies as a deductible component under TSUS item 807.00 and HTSUS subheading 9802.00.80.

17. The fabric components, along with other components fabricated in the United States, such as buttons, thread, zippers and other trim items, were exported to Mexico.

18. These components were assembled into trousers by sewing without further fabrication in Mexico.

19. In Mexico, the sewn trousers were pressed, ovenbaked, washed, repressed and packaged for shipment to the United States.

20. The ovenbaking involved inserting the trousers into an oven at 300 to 325 degrees for approximately 10 to 25 minutes depending on the thickness of the fabric. The heat of the oven expels a molecule of water from the prepolymer in the fabric which cross links the cellulose fibers of the fabric.

21. Ovenbaking is an operation incidental to the assembly of the trousers.

22. The effect of ovenbaking is the same as the effect of pressing, which is incidental to assembly. 19 C.F.R. §10.16(b)(7).

23. The effect of ovenbaking is to create a smoothness to the garment and prevent wrinkling.

24. Customs has previously allowed TSUS item 807.00 treatment for articles moved through a hot oven. See HQ 063786 dated June 10, 1980; HQ 058070 dated February 7, 1978.

WHEREFORE, Plaintiff demands judgment: (1) holding that the U.S. origin fabric components of the subject merchandise are properly eligible for an allowance in duty under TSUS item 807.00 and HTSUS subheading 9802.00.80 and (2) ordering the district director of Customs to reliquidate the entries in issue with a duty allowance for the value of the United States origin fabric components under TSUS item 807.00 or HTSUS subheading 9802.00.80.

Respectfully submitted,

SANDLER, TRAVIS & ROSENBERG, P.A.
Attorneys for Plaintiff
5200 Blue Lagoon Drive
Miami, Florida 33126-2022
(305) 267-9200

By: /s/ BETH C. RING
BETH C. RING

Dated: New York, New York
July 21, 1993

CERTIFICATE OF SERVICE

Beth C. Ring certifies that I am an attorney with Sandler, Travis & Rosenberg, P.A., 5200 Blue Lagoon Drive, Miami, Florida 33126, and that on July 21, 1993, on behalf of plaintiff herein, the annexed papers were served by first class mail, postage prepaid upon:

Joseph I. Leibman, Esquire
Assistant Attorney General
Dept. of Justice, Civil Division
International Trade Field Office
Commercial Litigation Branch
26 Federal Plaza
New York, New York 10278

attorney for defendant herein.

/s/ BETH C. RING
BETH C. RING

UNITED STATES COURT OF
INTERNATIONAL TRADE

Court No. 93-06-00343
(Complaint File)

HAGGAR APPAREL COMPANY, PLAINTIFF

v.

UNITED STATES, DEFENDANT

ANSWER

Pursuant to Rule 7(a) of the Rules of the United States Court of International Trade, the United States, defendant, responds to the allegations of plaintiff's complaint as follows:

1. Admits.
2. Admits.
3. Admits.
4. Admits.
5. Admits.
6. Admits.
7. Admits.

8. Admits this is plaintiff's claim, but denies its validity.

9. Admits, as to the portion of the garments that were granted 807.00, TSUS, or 9802.00.80, HTSUS, treatment; denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof, with regard to the remaining components of the imported garments.

10. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

11. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

12. Denies.

13. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

14. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

15. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

16. Denies.

17. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

18. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

19. Admits, but avers that this is an overly simplistic description of the Mexican operations.

20. Denies the allegations of this paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

21. Denies.

22. Denies.

23. Admits, but avers that this description is overly simplistic.

24. Admits, but avers that those operations and allowances are not at all comparable to the operations that were performed upon the importations; further avers that the rulings cited involved merchandise and operations that are completely different than those involved in this case; further avers that Customs has previously disallowed item 807.00, TSUS, and/or subheading 9802.00.80 treatment for operations similar to those involved here that were performed upon textile goods, see, *e.g.*, HRL 027763 of September 13, 1973, 554436 of August 11, 1988.

WHEREFORE, defendant respectfully requests that judgment be entered dismissing this action, overruling plaintiff's claim, sustaining the decision of the appropriate customs official and the assessment of duty thereunder and granting defendant such other and further relief as may be just and appropriate.

FRANK W. HUNGER
Assistant Attorney General

/s/ Illegible
JOSEPH I. LIEBMAN
Attorney in Charge
International Trade Field Office

/s/ Illegible
SAUL DAVIS
Senior Trial Counsel
Dept. of Justice, Civil Division
Commercial Litigation Branch
26 Federal Plaza
New York, New York 10278
Attorneys for Defendant
Tel. No. (212) 264-9230 or 3485

CERTIFICATE OF SERVICE BY MAIL

SAUL DAVIS certifies that I am a trial attorney in the office of the Assistant Attorney General, Civil Division, Commercial Litigation Branch, International Trade Field Office, with offices located at 26 Federal Plaza, New York, NY 10278, and that on October 23, 1993, on behalf of the United States, defendant herein, I caused the annexed papers to be served upon:

Beth C. Ring, Esq.
Sandler, Travis & Rosenberg, P.A.
5200 Blue Lagoon Drive
Miami, Florida 33126-2022

the attorney(s) for the plaintiff herein, by depositing a copy thereof in a United States mail receptacle, properly enclosed in a securely closed envelope, duly franked or postage prepaid, addressed to said attorney(s) as above indicated.

/s/ Illegible

THE UNITED STATES COURT
OF INTERNATIONAL TRADE

Court No. 93-06-00343

HAGGAR APPAREL COMPANY, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

BEFORE: HON. DOMINICK L. DiCARLO, Chief Judge

PRE-TRIAL ORDER

NOW COME THE PARTIES, Haggar Apparel Company and the United States and set forth the following pursuant to the Court's instructions:

I.

STIPULATED FACTS

1. Jurisdiction over this action is vested in this Court by 28 U.S.C. §1581(a).

2. Haggar Apparel Company (hereinafter referred to as "Haggar") is the primary operating subsidiary of Haggar Corporation, a publicly traded corporation. Both Haggar Corp. and Haggar Apparel Company are incorporated in Nevada.

3. Haggar designs, manufactures, imports, and markets directly to retailers throughout the United States casual and dress men's apparel products including slacks, shorts, suits, sportcoats, and shirts. Products are offered in a wide variety of styles, fabrics, colors, and sizes. *Pl. Exh. 4* (Haggar's SEC Form 10-K).

4. Haggar's products are sold through approximately 7,000 retail stores operated by its customers, which include major department stores, and mass market retailers.

5. Haggar is the real party in interest in this action and is the proper party plaintiff since Haggar (i) filed the protest which is the subject of this action, (ii) is the immediate parent company of the importer, Corsicana Company, (iii) is the party which paid the duties on behalf of the importer of record, (iv) was the owner of the imported merchandise, (v) is the party which paid for the imported merchandise from the foreign assembler, Haggarmex, S.A. de C.V. (hereinafter referred to as "Haggarmex"), plaintiff's second-tier subsidiary, and (vi) is the party which owned and exported the fabric components from which the imported merchandise was made. Plaintiff has standing to sue under 28 U.S.C. §2631(a).

6. The protest which underlies this action was timely filed.

7. All liquidated duties have been paid.

8. The summons filed in this action contains accurate information.

9. The merchandise at issue is certain men's trousers (hereinafter "trousers"), of 60 percent cotton and 40 percent polyester, assembled in Mexico by Haggarmex.

10. Haggar is well-known for its use of "performance fabrics" that maintain a fresh, neat appearance. *Pl. Exh. 4.*

11. The decision contested in this action is the assessment of duty by Customs at the rate of 16.5 percent ad valorem under item 381.62.40, Tariff Schedules of the United States ("TSUS") and at the rate of 17.7 percent ad valorem under subheading 6203.42.40, Harmonized Tariff Schedules of the United States ("HTSUS") depending upon the date of entry, on values for the imported trousers which included the values or costs of the cut-to-shape fabric components of the imported merchandise.

12. Cotton fiber has historically been the dominant fiber used in wearing apparel in the United States. Beginning in the late 1940's, resin treatments were introduced for 100% cotton fabric, to improve certain performance properties of the apparel, including reduction of tendency to wrinkle, and increased ability to unwrinkle during wearing and after laundering. These treatments became popular, especially in casual wear trousers and men's dress shirts.

13. The resin-treated wrinkle resistant garments described above were offered to the public under a variety of descriptive names, including wash and wear, drip dry, easy care.

14. The term "wrinkle" means the undesirable mussiness or puckering, which may occur in a garment when it is worn or laundered. Crease means the desirable sharp folded pleat, which is often inserted in certain types of fabric for purposes of styling.

15. Conventional wash and wear cottons were basically unsuited for use of garments which required deliberate creases or pleats.

16. Beginning in the 1950's, polyester fibers began to be marketed and promoted. These fibers were also blended with cotton. These blended fibers had performance advantages, including the ability to impart creases which would persist to some extent after wearing and laundering, and reduction of puckering in seams.

17. These features have been generally referred to as durable press. After wearing and after washing, flat areas remain flat, seams remain smooth and deliberate creases and pleats remain sharp. These properties are achieved on cotton apparel by applying a resin (reactant) to cross link the cellulose molecules. These performance characteristics are generally imparted successfully by the approved use of 100% synthetic fabric, pre-cure of blended fabrics and post-cure of blended fabrics.

18. If Haggar seeks to obtain a garment that will perform in a certain manner regarding surface flatness, crease retention and seam flatness, it will use either pre-cured, post-cured or all synthetic fabric.

19. The men's woven trousers involved in this action were part of a merchandising line referred to as "Presstige," whose products have certain performance characteristics. These characteristics were primarily crease retention, seam flatness, and surface flatness. The particular garment at issue is known by Haggar as model number 245.

20. The term: "post-cured" means a fabric that has been chemically treated (here, impregnated with re-

sins) in a textile finishing mill, but has not been cured by a specific heat process until after the completion of all assembly. During the period in question, Haggar effected post-curing through the use of a curing oven. "Pre-cured" means a fabric that has been chemically treated and cured at the mill, or prior to shipment to the customer who will cut it to shape and/or subsequently assemble the fabricated components. No post-cure ovenbaking occurs with garments made from this fabric, but there is pressing. "Pure finish" means a fabric that will not have been treated by chemicals, for a wrinkle-free appearance, nor will it be cured. If the resulting garment is made from pure finish fabrics of 100% cotton it will not have the surface flatness, crease resistance and seam resistance that is mandated by the Presstige line performance requirements.

21. The apparel industry has standards for crease retention, seam flatness, and surface flatness on a scale between 0 to 5. Haggar's identification of Presstige as a performance product, implied that it achieved ratings for surface flatness and crease retention of 3 or better.

22. The routine tests performed on both ovenbaked and non-ovenbaked garments are:

a. Surface Flatness—garment is washed three times, and allowed to condition for four hours. Garment is compared to a standard replica, to see how flat it is, or if it's all wrinkled.

b. Crease Retention—after washing and conditioning the crease in the garment is compared to a standard—does it remain, does it open up, and/or to what degree does it flatten out.

c. Seam Flatness—after washing and conditioning, the garment is examined for the amount of puckering on the seam, as compared to a standard.

23. During the period of time in issue, the Presstige line category of clothes encompassed basically three different types or ranges of fabric; a completely synthetic fabric type 0172; a pre-cured fabric type 5850/0585 and a post-cured fabric type 2010, the product at issue here.

24. Performance characteristics are imparted by the type of fabric involved, pressing techniques, and the oven-curing process. Some regulated heat process is necessary. The pressing varies by temperature and moisture application, depending upon the desired result and upon the fabric. To achieve greater crease retention and greater surface flatness, more heat is generally applied and more moisture. Unregulated heat or improper heat application can cause under or over curing, which can lead to rejection of the garment.

25. Curing positively affects the crease retention, seam and surface flatness of the poly/cotton blend. It negatively affects flex abrasion, tear strength, seam strength, and other factors.

26. The curing cycle at issue is approximately 12-15 minutes @ generally between 290F and 320F. The factory was instructed to maintain that temperature and to correct it if it went above or below the standard. If the temperature was not corrected, the garment would be over cured and under cured. Under curing would negatively affect the surface flatness and crease retention and could affect seam flatness. If over cured, tear, tensile and seam strengths, and flex abrasion

would be negatively affected. Therefore, it was imperative that the plant properly monitor the curing process. Over or under curing can also occur if times in the curing oven are more or less than the standard.

27. Post cured and pre-cured garments will perform the same and give the fabric the same quality.

28. Polyester or synthetic had the highest performance ratings, but was not considered desirable for many styles or models of pants.

29. Some weights of fabric perform better pre-cured and some post-cured.

30. Because chemicals are used in precured and postcured fabric, a stronger initial fabric must be used in order to compensate for the degradation of the fabric caused by the chemicals and the curing process.

31. Post-cured garments have been rejected for failure to comport with the ratings for three routine tests performed by Haggar on its garments and fabrics.

32. Presstige line is a performance level for wrinkle-resistant garments; therefore, the garments can be made with either a precured fabric, fabric that is chemically treated and made into the garment and then subjected to post curing, or an all synthetic fabric. There are no pure finish 100% cotton garments used in Presstige line. Any 100% cotton pure finish garments also had the routine tests performed on them, but the requirements were not the same as for Presstige, since pure finish 100% cotton garments are "very wrinkled" which is desirable for that product. The testing on pure finish was for information only as the desired wrinkles would make the three routine tests less significant since there would be no or minimal seam and surface flatness and crease retention—they are not desired in pure

finish garments. Pure finish garments would include jeans, and cotton casual pants.

33. The first fabric range for the Presstige model 245, known as fabric type no. 5850, was made with a fabric 60% combed cotton and 40% dacron polyester, and carried the lot model number 1111-5850/0585**-245. Fabric type 5850/0585 was a pre-cured, non-ovenbaked product. The second fabric type, 0172, was made with 50% dacron polyester, 40% avril rayon, and 10% orlon acrylic, and carried the lot model number 1111-0172**-245. Fabric type 0172 was a non-ovenbaked product. Third, the model in question, fabric type 2010, a post-cured, ovenbaked product, carried the lot model number 1111-2010**-245. All of these models involved the same assembly steps.

34. The U.S. fabric components on the two non-ovenbaked models, lot model numbers 1111-5850/0585**-245 and 1111-0172**-245, were granted 807 allowances by Customs.

35. The fifth through eighth digit in the lot model number denotes fabric type which determines the model to be baked. The lot model number is deciphered as follows:

11 -	digits one & two	- Haggar division.
11 -	digits three & four	- product code. (pant, coat, etc.)
2010 -	digits five thru eight	- fabric type
XX00 -	digits nine & ten	- color (basically irrelevant for production.)
245 -	digits eleven thru thirteen	- model (primarily denotes production processes.)

36. All of these pants were designated by the model number 245. This involves a men's fit, straight leg silhouette, belted, regular belt loops, 1/4 top pockets, 2 reece back pockets and 24 ligne buttons.

37. The different fabric types or ranges for Prestige model 245 described above had no effect on the assembly steps. Assembly of the product is the same whether it is oven baked or not. The only exception was that at the end of the assembly and after pressing, the ovenbaked model was loaded and unloaded to an oven conveyor for curing in the oven; this was mandated by Haggar's product standards. One can have an assembled pair of pants without the oven bake process or without pressing.

38. One can have a fully assembled pair of pants without the pressing process.

39. The 5850 style sold by Haggar for a price of $13.90 npt with suggested retail of $30.00. The 0172 style was sold by Haggar for a price of $16.00 npt with a suggested retail of $32.50. The model carrying the fabric style in question, 2010, used a natural blend duck cloth, with a fabric content of 60% combed cotton and 40% fortrel polyester. The price was $13.00 npt with a suggested retail of $30.00. *Pl. Exh. 16.*

40. The cost or type of fabric—*e.g.*, if treated for oven baking or not—makes no difference in the assembly process.

41. In non-ovenbaked products, if the crease is pressed incorrectly, the garment is corrected at another Haggar factory and sold as a first quality. However, for an oven baked product, once it is properly cured, any error in the crease cannot be rectified, and the resulting product and cannot be sold as first quality—they

become seconds or "assortments." Seconds or assortments which are caused by improper curing are not sold for any less than seconds or assortments which are caused by the assembly process.

42. In this case, the post-curing process used on the 2010s was achieved by pressing and ovenbaking. Haggar had owned ovens for 25 years, and the use of ovens was an efficient way to impart some of the characteristics it needed.

43. The imported trousers were assembled abroad in whole or in part of fabricated components, the product of the United States. *Pl. Exhs. 2 & 9.*

44. The cut-to-shape fabric components were exported from the United States in condition ready for assembly without further fabrication.

45. The cut-to-shape fabric components did not lose their physical identities in the imported merchandise by change in form, shape or otherwise.

46. Customs allowed TSUS item 807.00 or HTSUS subheading 9802.00.80 treatment on the subject entries for the United States fabricated components other than the cut-to-shape fabric components.

47. The fabric used to make fabric components for the trousers at issue was made in the United States. The fabric was purchased by Haggar in resin-treated form.

48. The uncured, resin-treated fabric was cut to shape in the United States by Haggar at its plant in Weslaco, Texas.

49. The actual cutting operations, which cut the bolts of fabric into the components used to assemble the

imported Presstige pants, takes 1.8 seconds for all of the components for each pair of pants.

50. The uncured, resin-treated fabric components, along with other components fabricated in the United States, such as buttons, thread, zippers and other trim items, were exported to Mexico for assembly.

51. These components were assembled into trousers by sewing without further fabrication in Mexico.

52. In Mexico, the trousers were pressed, oven-baked, and packaged for shipment to the United States.

53. The ovenbaking at issue involved inserting the trousers into a curing oven at 290 to 320 degrees for approximately 12 to 15 minutes. *Pl. Exh. 8* (Schedule 9).

54. No additional resins or other chemicals were added to the fabric components at the assembly plant in Mexico.

55. The effect of ovenbaking is to create crease retention and greater surface and seam flatness in the garment, and prevent wrinkling.

56. The engineering standards for all three models listed above were the same. The oven baking process is listed in the engineering standards as an option. *Pl. Exh. 7* (Schedule 6 page 2 of the pages entitled "Standard no. 999.020"). This option means that ovenbaking is used only in the post-cure process; if fabric required post-curing, ovenbaking was mandatory. In addition, the same sewing specification manual (*Pl. Exh. 5* (Schedule 4)) is used for all three models.

57. The labor for the loading and unloading to the oven conveyor adds a time of approximately .6 minutes per garment. As shown in *Pl. Exh. 8* (Schedule 9), the

actual oven time involved in the curing was 12 to 15 minutes, with 800 garments being treated per hour. Each of the garments in issue require curing for 12-15 minutes at the appropriate temperature.

II.

EXHIBITS

Plaintiff's exhibits and objections and defendant's exhibits and objections were previously filed with this Court.

AGREED AND STIPULATED:

FRANK W. HUNGER
Assistant Attorney General

By: /s/ JOSEPH I. LIEBMAN
JOSEPH I. LIEBMAN
Attorney in Charge
International Trade Field Office

/s/ EDWARD M. JOFFEE
EDWARD M. JOFFE
ARTHUR K. PURCELL
Sandler, Travis & Rosenberg, P.A.
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(305) 267-9200

/S/ SAUL DAVIS
SAUL DAVIS
Dept. of Justice, Civil Division
Commercial Litigation Branch
26 Federal Plaza, Rm. 346
New York, NY 10278
Attorneys for Defendant
(212) 264-9230 or 3584

Dated: _____, 1995

SO ORDERED:

_____
DOMINICK L. DICARLO,
Chief Judge

THE UNITED STATES COURT
OF INTERNATIONAL TRADE

Court No. 93-06-00343

HAGGAR APPAREL COMPANY, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

[Filed: March 13, 1995]

JOINT STIPULATION

BEFORE: HON. DOMINICK L. DICARLO, CHIEF JUDGE

By agreement of counsel and pursuant to the direction of the Court, the parties have agreed to stipulate to the following cost and time data contained in the attached schedules. This information is derived from trial exhibits 3, 7, 8, 9, and 10.

Respectfully submitted,

SANDLER, TRAVIS & ROSENBERG, P.A.
Attorneys for Plaintiff
Haggar Appeal Company
The Waterford – Suite 600
5200 Blue Lagoon Drive
Miami, Florida 33126

By: /s/ EDWARD M. JOFFE
EDWARD M. JOFFE

Date: March 13, 1995

DEPARTMENT OF JUSTICE
Civil Litigation Branch, Rm. 346
Attorneys for Defendant
The United States
26 Federal Plaza
New York, New York 10278

By: /s/ illegible
SAUL DAVIS

Date: 3/13/95

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

RATIOS - SELECTED STIPULATED COSTS AND TIMES BASED UPON EVIDENCE

	A	B	C	D	E	F	G
1	*Operation*	*Description*	*Operation Number*	*Cost including Overhead*	*Cost without overhead*	*Time*	*Time including 15 minutes for overbaking equipment*
2	Ovenbaking	loading and unloading	63,64	0.0260	0.0106	0.6173	15.6173
3	Total Operation	all	1 through 60	1.2300	0.5000	29.3237	44.3237
4	Prebaking	All operations before loading onto oven conveyer	1 through 62	1.0200	0.4146	24.4017	39.4017
5	Prebaking less pressing	All operations before baking except pressing	1 through 52 except for 42,50 and 51	0.9158	0.3723	21.9253	36.9253
6	Affected Components	2.80 -fabric cost and .28 cutting room labor cost	Information is contained in exhibit P-8	3.0800		N/A	
7	Assembly	Defined by Government as the joining of two solids	1,3,4,5(90%),7(99%), 8-11, 13(15%), 15-17, 19,21,22,24,25(97%), 26,27,29-33,35-38,39(90%),41,43-47	0.7600	0.3089	18.0620	
8	Non-Assembly	Operations other than those defined as assemby	All operations not included in numbers set out in assembly	0.4700	0.1911	11.2620	26.2620
9	S & H	Supply and Handling	6,14,20,23,28,34,40	0.0360	0.0146	0.8703	
10	Trim Operations	Trim inside and outside threads	48,49	0.0649	0.0264	1.5428	

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RATIOS - SELECTED STIPULATED COSTS AND TIMES BASED UPON EVIDENCE

	A	B	C	D	E	F	G
11	Pressing	Pressing	42,50,51	0.1042	0.0424	2.4764	
12	Pressing & Ovenbaking		42,50,51,53,54	0.1302	0.0529	3.0937	18.0940
13	Total Operation less overbaking			1.2040	0.4894	28.7084	

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HAGGAR - EQUIPMENT

Equipment	Cost	Ratio toTotal
Ovenbaking	$92,808	6.72%
Pressing	$430,000	31.15%
Ovenbaking & pressing	$522,808	37.87%
Total without ovenbaking	$1,287,724	93.28%
Non-assembly(overbaking, pressing, Reece buttonhole, YKK chop zip, inspection board and belt loop crimper)	$611,828	44.32%
Assembly -Difference beween non-assembly and total equipment	$768,704	55.68%
Ratio - Nonassembly/assembly		79.59%
Ratio - Overbake & pressing/assembly		68.01%
Ratio - Non-assembly/total		44.32%
Ratio - Ovenbaking & pressing/total		37.87%
Total	$1,380,532	100.00%

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DEPARTMENT OF JUSTICE
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THE UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: HON. DOMINICK L. DiCARLO, CHIEF JUDGE

HAGGAR APPAREL COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Court No. 93-06-00343**
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	
	)	

JOINT STIPULATION FOR REVISED SELECTED COSTS AND TIMES PURSUANT TO QUESTION 3A IN THE COURT'S DECEMBER 27, 1995 REQUEST

By agreement of counsel and pursuant to the direction of the Court, the parties have agreed to stipulate to the following revised selected costs and times.

Operation	Description	Operation Number	Cost Including Ovenbaking	Cost Without Overhead	Time	Time Including 15 Minutes For Ovenbaking Equipment
Revised Total Operation	All Except units 11 & 15	7-14, 21-60 6-14, 20-60	1.14247	.4644	27.2434	42.2434
Revised Prebaking	All operations before loading onto oven conveyor except units 11 & 15	7-14, 21-52	.93247	.3790	22.3214	37.3214
Revised Prebaking Less Pressing	All operations before baking except units 11 & 15 and pressing	7-14, 21-52 except for 42,50 & 51	.82827	.3368	19.845	34.845
Revised Assembly	Defined by Government as the joining of two solids except 11&15	7 (99%), 8-11, 13 (15%), 21,22, 24,25 (97%), 26,27,29,33, 35-38,39, (90%), 41, 43-47	.6844	.2782	16.2652	

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Haggar's agreement to these revised figures is not an agreement that the Government's argument for the use of these numbers is valid or appropriate.

Respectfully submitted,

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By: Edward M. Joffe

Date: January 25, 1995

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By:

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Attorneys for Defendant
Tel: 212/264-9230 or 3584

By: Saul Davis

Date: Jan 25 '95

SO ORDERED:

By :
HON. DOMINICK L. DICARLO, CHIEF JUDGE

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PROCEEDINGS

* * * * *

(212) 349-9692
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PROCEEDINGS

[4]

THE COURT: Be seated.

THE CLERK: COURT NUMBER 93-06-00343, Haggar Apparel Company verus the United States.

Is counsel for Plaintiff ready?

MR. JOFFE: Yes, Your honor. My name Edward M. Joffe, for the Plaintiff, Haggar. This is Arthur Purcell and Gilbert Lee Sandler, also.

THE CLERK: Counsel for Plaintiff ready? Defendant, ready?

MR. DAVIS: Yes, Your Honor.

THE COURT: All right.

Counsel told me it would take two days for the trial? Is that correct?

MR. JOFFE: Your Honor, --

THE COURT: We have scheduled that time, two days, in any event.

MR. JOFFE: Your Honor, we may finish quicker, but I think that that – I would say one to two days.

MR. DAVIS: I Think that's an accurate assessment, Your Honor.

THE COURT: All right. What I'd like to do in this particular case, if I can determine what the disputed facts are in this particular case, is to have counsel argue the next day, after we complete the matter. See if we can

* * * * *

[43]

about one hundred per cent polyester, which inherently is a performance fabric, and it would meet the requirements without any processing.

The poly-rayon that we're talking about requires some hot head pressing, and that's how we achieved the performance.

Q Well, then, why – why would you offer products that are not all synthetic, then, for these performance traits?

A Consumer demand. Consumers demand cotton, and that's more to the casual side of the spectrum.

Q Now, you mentioned the second method, in terms of obtaining the performance attributes, and that's referred to as a "pre-cure"?

A As a pre-cured.

Q And, could you explain to the Court what is that?

A Yes. The resins are applied at the mill, in a flat state, when the fabric's in a flat state, and the heat treatment and the heat setting is applied at the mill.

Q And did you use a pre-cure fabric for pants that were included in the "Prestige" line?

A Several, yes.

Q And then you mentioned the third is the oven baked?

[50]

Once we start the process, in the factory, on the presses, then if there are, that process can continue. It can continue at a temperature of a hundred and seventy – as low as a hundred and seventy degrees, which we do get in tractor-trailers. And if there are creases in the pant, or winkles in the product, when we stack them and ship them, then in fact those wrinkles could become permanent and make the product useless.

Q Are there any economic consequences associated with oven baking in the United States afterwards? In terms of cost.

A We have, in our entire process, whether – in our history, whether we were manufacturing in the U.S. and baking in the U.S., or manufacturing in Mexico or the Dominican Republic, we always bake at the end of the

process, for the reasons I just mentioned. It's more efficient, manufacturing-wise, and it's also necessary.

(Pause)

Q Let me ask you about the sale of seconds or irregulars.

A Yes.

Q Are you familiar with Haggar's practices in the '88-'89 period?

A Definitely.

Q Were there – were there irregular – was

A It will not be in a flat state and it will not have a crease.

Q Will it be all wrinkled up?

A Well, relatively. I mean –

Q Now, let's say you had pressing on the pure finish garment, and then you had the entire procss properly performed on the post-cured garment, and then the consumer would wash it once or twice or three tims.

Would there be an observable difference between the two garments?

A Yes.

Q What would the observable difference be?

A The surface flatness and the crease retention would be much greater in the permanent press, or the post-cured garment.

Q Does the post-curring process permit the garment to have a relatively permanent performance for crease retention and surface flatness?

A Yes.

Q Is that a desirable requirement to, for Haggar?

A In some garments – in some garments, especially cotton and cotton-blend garments. It's very desireable.

Q Well, where it's not desirable, do you actually use a resin and a post-cure process on your garments, where it's not desirable?

A Where it's not desirable, we use pure finish fabrics.

Q Does Haggar advertise its garments that have been post-cured?

A During the period of time in question?
Q Yes.

A Yes.

Q Did that advertising include emphasis to the consumer on performance regarding the surface flatness –

A Yes.

Q -- and crease retention?

A Yes, it did.

Q Why did you – well, withdrawn.

How extensive was that advertising campaign?

A Relatively extensive. It was a significant portion of our advertising for that, for those years.

Q Well, why did you – why would you expend such monies on perforamce characteristics that are imparted by the curing process?

A Because they're desirable to the consumer. Easy care is desirable.

Q And if it's desirable to the consumer, it is desirable to Haggar?

A Yes.

Q Is that an important factor in marketing these articles?

A It's a significant factor.

Q Did Haggar perform – withdrawn.

Now, you had mentioned earlier that Haggar conducted or was involved with research and development on the resin application, in conjunction with the manufacturer.

Why was Haggar involved in that type of research and development?

A Because we are involved in the development of all facbrics, not just resin-finish fabrics. We're involved in the development of every fabric that we run in our product lines.

Q Well, why is that?

A It's a styling issue and it's a quality issue.

MR. JOFFE: Your Honor, I have a relevancy objection to this line of questioning. These are hypothetical and speculative. They're not pointing to the products in issue.

MR. DAVIS: It's specifically what I asked about.

THE COURT: I Think what he's referring to are any of these products –

required hot head pressing.

Q But is that pressing considered to be a curing process, such as the post-curing that's involved here?

A It's a heat-setting process.

Q Okay, now, you also stated that there's a post-cure fabric and there's a pre-cure fabric that's used for the "Prestige" pants.

Is that correct?

A Yes.

Q Well, why don't you do pre-curing on all the pants, including the duck cloth?

A There are a multitude of factors, including the capacity of the fabric mills to suppy resin-treated fabrics. Some – some fabrics perform better under one process, and others perform better under another process.

But, there are capacity issues, both on the mill side and on our side that are involved in that.

Q Well, my understanding is, is that the mill, itself, just impregnates the fabrics with the resin.

Is that correct?

A That is correct.

Q So, that's going to be done no matter what, whether it's pre-cure or post-cure process. It's going to have to impregnate the fabric –

A It's a different process –

Q – with the resin.

A – if it's pre-cured, it's a different process, at the mill level, than if it's post-cured.

Q Does the mill do the finishing on a pre-cured fabric?

A Yes, they do. They do the heat-setting.

Q All right, they do the heat-setting.

A Right.

Q All right.

Now, isn't it correct to state that on a duck cloth, because of the nature of the fabric, it is more efficient, and you get better performance characteristics if it's done by a post-cure, rather than a pre-cure method? Because of the nature of the fabric?

A On the duck cloth fabric?

Q Yes.

A Itself?

(Pause)

We've done the duck cloth, both pre-cured, and post-cured, and still met the requirements that we're talking about here. Now, we did not do it during the period of time in question.

THE COURT: Is there a reason for that?

THE WITNESS: Is there a reason for that?

THE COURT: Was there a reason for not doing it at the time in question, as distinguished from some other time where you do do it?

THE WITNESS: The – I, I don't think there is a specific reason for it.

THE COURT: So, one is just as efficient as the other? Even at that time, the time in question?

THE WITNESS: I want to be very correct on this.

We have pre-cured our duck cloth fabric, and advertised it as a performance product, meaning that it exceeded the industry-accepted standards. But, we are able to achieve a better performance with the post-cured product.

THE COURT: So, then, it's preferable to use the post-cured product?

THE WITNESS: If that's what we're looking for.

THE COURT: Okay, something in excess of a three?

THE WITNESS: Yes, correct.

THE COURT: Well, both met the three, the post-cured would be greater than the pre-cured?

THE WITNESS: Would get us closer to a four, that's correct.

THE COURT: So, you would be producing a

* * * * *

THE WITNESS: That's correct.

BY MR. DAVIS:

Q Now, if you only used the press, in order to complete the curring process, how long would that take?

A It's –

Q In actual fact.

A I, I can get the numbers for you. I don't have them right here, but it's not twelve minutes.

THE COURT: Approximately how long does the pressing operation now take, without the oven part of it?

THE WITNESS: It's about sixty, eight seconds, something like that.

THE COURT: And you're saying, then, that –

THE WITNESS: It could take two or three times –

THE COURT: -- if they were to press it would be some time from double or triple that?

THE WITNESS: And that may be high. We, we have the exact numbers. I just haven't –

THE COURT: All right. Supply them, for the record, if it's important enough to get them.

BY MR. DAVIS:

Q Now, you also testified in the 245 Model you had a cotton-poly poplin.

Was that pre-cured or post-cured?

A Well, it could reflect anything in the process, from the raw materials forward.

Q Now, you testified earlier that one of the reasons that you post-cure at the factory is, rather than in the United States, is because that there can be some partial curing in transportation –

A Yes.

Q -- because of heat that's raised in the trucks or whatever you –

A Yes.

Q -- whatever is being used to transport the garments.

Is that correct?

That is correct.

Q Now, when you et the fabric from the factory, is that transported in the same, by the same means as the garments are?

A Yes.

Q When –

A A similar means.

Q Similar means – by truck or by rail, is that correct?

A Yes.

Q When you – when you send the rolls of fabric to your Weslaco cutting facility, in Texas, where the fabric is cut into the components that are being used to make the garments in issue, do you also ship by truck.

A Yes.

Q When the completed components, from Weslaco, are shipped to the Mexican assembly area, is that, are the components also shipped by truck?

A Yes.

Q And do those trucks, can those trucks get up to temperatures of a hundred and seventy-five degrees?

A Yes.

Q Why doesn't that affect the garments, the performance of the garments?

A Because – because we have not started the heating, the curring process – we start the heating, the curing process at about three hundred degrees on the presses.

Q Okay, so what you're saying then is that a post-cured operation is probably more preferable to a pre-cure

because once you start the heating process, then simple transportation can affect the fabric, if there are wrinkles or, of the fabric in transit.

Is that correct?

A The last part is correct. I don't – the first part about one being preferable to the other, it depends on what you're – what you're desiring.

Q All right, but in the – all right. Let's take the post-cured garments, then.

So, you're saying then that once, until you've gotten to three hundred degrees on the garment, the curring process hasn't started.

Is that correct?

A That is correct.

Q Okay, so then, in fact, the – you said that the presses, in fact, then, begin the curring process.

Is that correct?

A That is that correct?

Q And then –

A It's inadvertent.

Q All right. And the pressing process is after the completion of all assembly on the pants.

A That's correct.

Q Is that correct?

So, then, the oven curing process is the completion of the major portion of curing, after all assembly has been completed.

Is that correct?

A That's correct.

Q Do you need the oven curing, in the post cure product, to do any assembly?

THE COURT: It's already stipulated assembly

[95]

MR. DAVIS: All right. I'll save – I'll save that.

THE COURT: All right, fine.

MR. JOFFE: We have a video, Your Honor.

THE COURT: Okay.

(Pause)

BY MR. DAVIS:

Q Now, when you a defect that's done in a sewing operation, can you open up the seam and then correct that defect?

A Yes, if that – yes.

Q If you properly pressed the pants and got the surface flatness that you sought and the crease that you sought – well, withdrawn.

If the pants was improperly pressed, so that there were wrinkles in the pants, or the crease was off-center, or the crease was not directly in the center portion of the pants, but was to the side, and it was properly cured by the oven baking process after that, could you correct that, those defects?

A The examples you gave are not correctable.

(Pause)

MR. DAVIS: Your Honor, could we take –

THE COURT: A break?

MR. DAVIS: -- a break now, because what I'd

AFTERNOON SESSION

[97]

Whereupon,

FRANK BRACKEN

the witness on the stand at the time of the recess, resumed the witness stand, and upon examination testified further as follows:

CROSS-EXAMINATION (RESUMED)

BY MR. DAVIS:

Q Did Haggar manufacture "Prestige" pants in the United States at any time?

THE COURT: Excuse me. I didn't hear it, counsel.

MR. DAVIS: I'm sorry. I'll repeat the question.

BY MR. DAVIS:

Q Did Haggar at any time manufacture "Prestige" pants that were subjected to a post-cure process in the United States.

A Yes, we did.

Q So, then, Haggar would have had ovens and presses in the United States.

Is that correct?

A Yes.

Q Was that also during the period '88'-'89-'90?

[98]

A I'd have to check my facts, but – I'd have to check my facts, but I'm fairly comfortable that we did.

THE COURT: Was the assembly process also done in the United States, in those cases?

THE WITNESS: Yes, but I don't know if it was on this particular product, and this particular process, during those two years.

BY MR. DAVIS:

Q Now, once the garment, this, let's say the garments in issue, are fully assembled in Mexico, could they be shipped to the United States for pressing and oven baking, using the same presses and oven baking equipment that was in the United States?

A They could be, but it would substantially add to our labor cost.

Q How would it add to your labor cost?

A Because of the pressing. That's one of the major reasons we assemble in Mexico.

Q Because the pressing – the pressing labor costs are less expensive in Mexico than it is in the United States?

A Substantially less.

(Pause)

Q Now, are you familiar with the term "under-curing"?

A Yes, I am.

* * * * *

[101]

THE COURT: I just want to make sure it wasn't a question of Miss Best having one or two years' experience and you having a great deal more, or vice versa. That's all.

THE WITNESS: Our experience is comparable.

THE COURT: Okay.

BY MR. DAVIS:

Q Is it correct to state that crease retention and surface flatness are very important to Haggar in manufacturing, advertising, and marketing these pants, becaues they are important to the consumer?

A That is correct.

THE COURT: I believe he's already answered that, counselor.

MR. DAVIS: Not on this side, Your Honor.

THE COURT: Excuse me?

MR.DAVIS: There's a little – if you'll excuse the pun –

THE COURT: Nuance?

MR. DAVIS: -- "wrinkle," I was going to say.

THE COURT: Excuse me?

MR. DAVIS: If you'll excuse the pun, I was going to say there's a little wrinkle here.

THE COURT: A wrinkle? Let's hear the wrinkle. Go ahead.

[102]

THE WITNESS: That is correct.

THE COURT: I hope you're not going to judge this case on what you perceive to be wrinkles.

Go ahead.

[laughter]

MR. DAVIS: Sometimes, the wrinkles can be quite important.

THE COURT: Then, I –

MR. DAVIS: As in the "Prestige" line.

THE COURT: And you're to press on, and well see how important they're going to be. Because the mere fact that you find a wrinkle there and it's that far off, doesn't mean it's going to be dispositive of anything, but go ahead. Explore it fully, if you think it's important.

MR. DAVIS:

Q If consumers purchased pants that did not have proper crease retention or surface flatness, is it correct to state that they would return them for improper performance?

A Some percentage of them do.

Q Is it correct to state that Haggar is very strict regarding its standards and directions to manufacturing facilities in order to insure surface flatness and crease retention?

A That's correct.

[103]

(Pause)

Q During the period in question, has Haggar ever manufactured the merchandise in issue with pressing alone, without over baking?

A No.

Q Has Haggar ever sold these pants without oven baking, even if pressing was performed in accordance with Haggar's standards for pressing?

A "These pants" being?

Q The "Prestige" post-cured?

A No.

Q If Haggar had merely assembled these pants, without either the pressing or the oven baking, would Haggar have sold those pants as a "Prestige" line pants?

A No, we would not have.

Q Is it correct you would not have because they simiply would not have met Haggar's performance requirements.

A Well, we wouldn't sell any pant without pressing.

Q But, would it have met Haggar's performance requirements?

A No, it would not have.

Q Now, other than the standards for curing and pressing, are there also standards for the appearance and placement of the crease?

[104]

THE COURT: What was the last word, again?

MR. DAVIS: Appearance and placement of the crease.

A That is correct.

Q Is appearance and placement of the crease a function of the pressing techniques?

A Yes, it is.

(Pause)

Q Is it correct to state that the oven baking process is the final process that causes these pants, if everything else is done properly, to meet the design and quality assurance requirementsof Haggar for that pants to be sold as a "Prestige" pants?

A That's correct.

(Pause)

Q Now, let's assume you have two pair of pants. The exact, same fabric is used, identical fabric. Both are subjected to the 245, Model 245 assembly process.

Do you follow me?

A The fabric in question is the twenty-ten?

[105]

Q It's a twenty-ten, which is a duck cloth that has been --

A Correct.

Q -- impregnated with resins for post-curing. Both fabrics are subjected to the same assembly process, the Model 245 assembly process.

A Correct.

Q Is it correct to state that if one is properly cured and the other is not, the first will be sold as a first-quality "Prestige" pants, while the second would never be sold as a "Prestige" pants?

A I guess, in that scenario, if we still had the opportunity, in other wors, we would not do that deliberately. We would not fail to oven cure it.

Q But I'm saying it wasn't cured properly. You did oven cure it, but somehow the settings were improper --

A It was cured improperly?

Q It was cured improperly.

A It would be sold as a second.

Q All right. Now, in -- when garments are sold as a second, is it correct to state that Haggar discounts it

anywhere from twenty to twenty-five per cent, on a wholesale level, at Haggar's level?

A That's a good benchmark.

Q Is it correct, though?

[106]

A Well, it's not absolutely correct. It's a good benchmark. I mean, we -- sometime, it's what the market will bear, higher or lower.

Q And is it -- well, that was my next question.

Is it correct to state there are times that such seconds will be sold for even less than - -

A Correct.

Q -- for an even greater discount than the twenty to twenty-five per cent?

A Certainly, both, both extremes.

Q And is it correct to state that, at the retail level, in that scenario, the improperly cured pants would be sold by as much as a twenty-five to thirty per cent discount?

A Correct.

Q Is it correct to state that the, generally speaking, that Haggar's and the industry's markup for these types of garments range in the thirty to thirty-five per cent range?

A That's correct.

THE COURT: How are the seconds marketed? Label changes?

THE WITNESS: They're marked as irregulars, and disributed through other channels of distribution.

THE COURT: Are they labeled as "Prestige" irregulars?

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THE WITNESS: In some cases, they would be labeled "Prestige" irregulars.

BY MR. DAVIS:

Q I thought you had testified just earlier that if the curing process is improper, --

A Well, --

Q -- they're not sold as "Prestige"

A If you're only talking about the curing process, but we have "Prestige" irregulars that are properly cured, but they're still irregulars for other reasons, because we have irregulars in every range of product that we run today.

THE COURT: We're just concentrating, now, on the curing process.

THE WITNESS: They would not be sold as a "Prestige" product.

THE COURT: Would it be sold as a Haggar product?

THE WITNESS: Yes, as Haggar.

BY MR. DAVIS:

Q But, if you do have, you can have irregulars in the "Prestige" line that are sold as "Prestige irregulars," but it doesn't involve the curing procss?

A That's right. That's correct.

[111]

MR. DAVIS: I didn't remember if he did. I wasn't sure about that, Your Honor. That's why I wanted to get him to --

THE COURT: All right, go ahead.

A Yes, I did.

Q All right, then, that's fine.

Now, is it correct to state that the actual sewing and assembly of the components that are in issue in this case completes the article into an article that's known as a pants.

A Correct.

Q However, the product, the "Prestige" pants that Haggar desires to sell, is not completed unless proper pressing and oven curing occurs.

A That's correct.

THE COURT: And we've gone over that three or four tims, already, I believe. That they do complete it -- that the the assembly is complete. The only thing that remains to be done is the curing. The curing is to put the crease in there, make it a permanent, and make it wringle, at least to a certain degree, wringle-proof. It has to go above a pont-three, I believe, in order to meet the standards of the Haggar "Prestige" slacks. I don't want to repeat the thing over again. I think we've covered it. So move on.

[112]

MR. DAVIS: I will, Your Honor.

BY MR. DAVIS:

Q Did Haggar manufacture pants made from pure finish fabrics that were completed, saleable pants, immediately after the last assembly step was done?

A That were saleable pants immediately?

Q Yes.

A At - - at the time in question?

(Pause)

We probably did, on a ery small scale.

MR. DAVIS: If I could just check my notes for a minute or two, Your Honor?

(Pause)

I have just one other area.

BY MR. DAVIS:

Q Are you familiar with the term "business plan"?

A Certainly.

Q Could you describe for The Court what a business plan is?

A Well, our business plans are a comprehensive plan that determines what we're going to -- what we're going to do. We start -- I can start at the top level and go to the bottom level, but at the top level, it's our strategic plan and our revenue plan and our profit plan and how we're going to execute that plan over any given period of time.

[113]

Q Do your business plans discuss the type of products you will be selling and the requirements for those products?

A Usually, our business plans would discuss that, in general terms.

Q Did you have a business plan that discussed the "Prestige" pants, post-curred pants?

A We didn't have one document, but we had a business plan in place, at that time, and some of the elements, certainly, discussed "Prestige."

Q And, did it also discuss the performance characteristics imparted by the --

A Yes.

Q -- post-curing process?

Do you know if the business plan discussed the techniques of assembly and sewing the pants?

A It would not.

Q When a business plan is made, is it correct to state that virtually every level of the corporate hierarchy is involved?

A That's correct.

MR. DAVIS: No further questions at this time.

THE COURT: Anything further, counsel?

[114]

MR. JOFFE: One question, Your Honor.

REDIRECT EXAMINATION

BY MR. JOFFE:

Q Mr. Bracken, I believe you testified that an oven baked "Prestige" second would sell for twenty-five to thirty percent below the regular price?

A Yes, but I qualified it.

Q Would that same discount apply to other types of seconds?

A Exactly.

MR. JOFFE: No other questions.

THE COURT: Counsel, you said "no questions at this time. Are you through with the witness?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay. You're excused.

(Witness excused)

MR. JOFFE: Your Honor, may this witness be excused from the Court?

THE COURT: Certainly.

MR. JOFFEE: Our next witness is outside, Your Honor.

THE COURT: Fine.

(Pause)

THE CLERK: Please raise your righthand.
Whereupon,

[120]

A And then, we have the area of sub-assembly. The sub-assembly was broken down into two, which was the fronts, which consisted of Unit 18 and 19 --

Q The fronts, that's Unit 18 and 19.

A And the backs, which consisted of Unit 20 and 30.

Now, the fronts used what was prepared in Unit 11, and what was prepared in Unit 15. And the backs used what was prepared in Unit 25.

Q So, that's the sub-assembly. Could you put an "S" in those areas, please.

[Markings placed on Exhibit]

A And then, after that, we had the fronts and the backs assembled, and then we had to put the garments together, and we were broken down into four lines. And, each of the lines would run either one model -- they could all run different models, or they can run the same model, all together.

But this line, it started from here, and this is the assembly of the line, and here is the pressing area, and here

at the bottom, at the end, is all the sizing stacking and the packing.

And this area, on the bottom part, is where the oven was.

THE COURT: So, you're saying 14, 13, and what is that?

[121]

MR. JOFFE: We can call them 1L, 2L --

THE COURT: Oh, L, excuse me.

THE WITNESS: For line one, two, three, and four.

THE COURT: L1, 2, 3, what you just indicated. Is that correct?

THE WITNESS: That's correct.

THE COURT: Okay.

MR. JOFFE: You can sit down.

BY MR. JOFFEE:

Q So, just to reiterate, I just want to make sure that we're clear, there are four assembly lines.

A That's correct.

Q And then, at the end of each line, is pressing for each line.

Is that correct?

A That is correct?

Q And in this area is where you do the stacking and the sorting?

A The stacking, the sorting, and the packing of the garments.

Q And all of this would be the same, whether it's oven baked or not, correct?

A Yes, it --

[122]

Q In other words, the stacking, the sorting, the assembly.

A Correct.

Q Now, if there was an oven baking operation, what would -- at what point would the pant leave the line and be oven baked?

A If it was an oven bake operation, after being pressed, it would go into conveyors that would go into the oven, and come back and be unloaded and then go through the regular procedure of packing and stacking.

Q So, to reiterate, the only difference foroven baking would be that there would be a conveyor that would take the pant from one of the four lines, to the oven, whichis on the botton left.

Correct.

A That is correct.

Q And then it would be returned to the line at which it left?

A That's correct.

Q And then, at that point, it would be sorted and tested --

A Well, sorted and packed.

Q Sorted and packed --

A Ready for shipping.

Q All right. You can sit down.

[123]

THE COURT: Where are the labels put on? In the same area?

THE WITNESS: The labels -- the labels usually -- the labels were put in the size and stack area.

THE COURT: After they left the oven?

THE WITNESS: Yes, regardless if it was baked or non-baked.

THE COURT: Okay, the same areas.

MR. JOFFE: Your Honor, at this time, we'd like to show a video --

MR. DAVIS: For clarification purposes -- I'm sorry to interrupt – if the Judge could, on the Judge's questions, if the Judge could clarify what type of labels there were?

THE COURT: What -- what kind of labels do you affix to the garments?

THE WITNESS: Okay, there's two labels that are put on -- one in the prep -- two labels in the preparations, and that's done for every product. And, the labels that I'm talking about, put on the back, is that hang-tag and the OCR is – it's basically, it's a hang-tag and an OCR, what we call OCR, and we have a sample of this. This is an OCR --

THE COURT: Is that cloth? Paper? What?

THE WITNESS: No, this is paper.

* * * * *

[154]

When it was unloaded, we have in the video, they were putting this hang-tag on the unloading. In this operaton, they're putting the flasher. And this tag ticket, at the back of the line, what that means, that's going to be what we call the OCR.

Q Do you have some samples of these various tickets here?.

A Yes, I do.

The hand-tag is item number 26BB. The OCR is item number 26D. And, I do not have a flasher.

Q So, I'm correct that all of the paper tags are placed on after the oven baking?

A That's correct.

Q And any labels that are placed on before are cloth?

A Excuse me?

Q And that any labels that are placed on before the oven baking are cloth?

A That's correct.

(Pause)

Here is what we call size and stack. And this, what we're doing here is assorting it, by size, and number of pants, to be ready to put in a container.

(Pause)

I may add, also, by cut, by order number.

[155]

Here, this operation, belt pants. It's adding this belt to the pair of pants, which is item number 26FF. Go ahead.

(Pause)

Here, scan OCR, and load into big packs. What we do here, we have this OCR, this is what the OCR is, has bars. We have a scanning gun, that will pick up, we will pick up our inventories of our products, and load into big packs is actually loading the pair of pants into the container, or big pack.

THE COURT: What does "OCR' stand for? It's an acronym for what? Do you know?

THE WITNESS: I'm not sure.

MR. JOFFE: Optical -- it's the scanners, like at the supermarket.

THE COURT: All right. I was just wondering if he knew or not. I understand.

THE WITNES: Yes, but I'm not sure they're the same.

THE COURT: Had to do with the --

THE WITNESS: That is what we call OCR. It will --

* * * * *

THE COURT: -- with the bar --

THE WITNESS: -- pick up this bar code.

THE COURT: -- keeping the inventory, okay.

* * * * *

[176] in evidence).

MR. JOFFE: Your Honor, at this time, I wanted to offer into evidence the various components that were used by the witness, during the video narrative. They are all Exhibits 26, with a letter suffix.

THE COURT: All right.

MR. DAVIS: I have no objection, Your Honor. Well --

THE COURT: Proceed.

MR. DAVIS: -- if I just may have a very short voir dire, just for a minute.

THE COURT: You have no objection. What are you voir diring about?

MR. DAVIS: Because there was one question I did have.

THE COURT: Then you do object, and you want to voir dire.

MR. DAVIS: Yes.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. DAVIS:

Q Do you know if any of the components, other than the fabric components, were impregnated with resins that required a curing process?

A I do not know.

[177]

THE COURT: Were you -- counsel was the thread impregnated?

Q No, I'm talking about the pocket materials, the bank materials –

A As far as I know, they were not.

Q That's my understanding.

THE COURT: Okay.

Q So, the only -- the only components in issue in this case, that were denied duty-free treatment, are the ones that were impregnated with resins and required oven treatment, oven curing?

THE COURT: Would he know that, that is was denied the --

MR. DAVIS: Well --

THE COURT: Is [illegible] expert on it? I'm not sure.

THE WITNESS: No, I'm not.

MR. DAVIS: Well, then, it's -- I just wanted it to be clear for The Court, then --

THE COURT: I'll agree to it. I have no problem. But, I don't think this witness knows what --

MR. DAVIS: All right, we'll stip -- do you want to stipulate, for the record, then, that the -- of the components that are being now moved into evidence, the only ones that were denied duty-free treatment are the fabric components that were impregnated with r.

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MR. JOFFE: That's correct.

THE COURT: Okay.

MR. DAVIS: All right, no objection.

DIRECT EXAMINATION (RESUMED)

BY MR. JOFFE:

Q Could you look at Exhibit 7, please?

MR. JOFFE: And, Your Honor, this has been admitted, but I would, I want the witness to explain Exhibit 7.

(Pause)

A Okay. The first --

Q Okay, just a minute.

(Pause)

Could you explain to The Court what is Exhibit7?

A They were the standards used at the plant at Haggar Mex at the time of '88-'89.

Q And this was the actual document that was written at the time and used by you?

A Yes.

Q And, if you could turn to the second page, and explain to The Court what is on the second page?

A This is an index of models. Where it says "lot model," what we're looking at right there is the last

* * * * *

THE COURT: You made such a test in 1988 or '89?

THE WITNESS: Yes, I did.

THE COURT: All right. Tell us about that test.

THE WITNESS: It was a quick test, as far as just putting some OCRs and hang tags to the pair of pants, to run it through the oven, at the required temperature and required time, taking it out, and then putting my finger to it and rub on it, and some ink did smear.

THE COURT: The only thing that happened is the ink smeared?

THE WITNESS: Yes.

THE COURT: Was there any crinkling or folding or anything else of the material, or crumpling of the paper?

THE WITNESS: Not on the samples that I saw.

THE COURT: All right. So, what you know is that the ink might smear if you put it through this process?

THE WITNESS: That's correct.

THE COURT: That's the only effect you're aware of.

THE WITNESS: That's the only effect on ticketing.

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THE COURT: And that was -- and that is the basis of your statement, based on what you did and saw?

THE WITNESS: That is correct.

Now, as far as the --

THE COURT: All right, so, now, we're beyond the realm of expertise on this. It's a test.

Do you have any questions on it, counselor? Do you have an objection to it?

MR. DAVIS: I'll leave it for cross examination.

THE COURT: All right.

MR. DAVIS: But I stand on my objection --

THE WITNESS: Can I add --

THE COURT: Excuse me?

MR. DAVIS: My objection remains, but you're not --

THE COURT: Well, the objection you made was on a question of his testifying as an expert and giving an opinion.

MR. DAVIS: That's correct.

THE COURT: He has not given testimony as an expert or given an opinion. He's stated he actually performed it, himself.

MR. DAVIS: All right, I misunderstood Your Honor's statement, and if he's not going to give any --

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objection, so I agree to its admission.

THE COURT: Fine. Proceed.

You intend to offer it? Continue to offer it, is that correct, counsel?

MR. DAVIS: It was a continuing offer, subject to my objection.

THE COURT: All right, so, it's received. Exhibit 6, received, and just for the purpose -- what is that?

MR. DAVIS: It's captioned "Haggar Apparel Non-Assembly Operations, detailed Model 245, Mexican production factility (belted model)."

(Whereupon, Plaintiff's Exhibit 6, having been previosly marked for identification, was received in evidence.)

BY MR. DAVIS:

Q Now, in making the actual pocket bags, on the Model 245 --

A Back pocket or front pocket?

Q The bags for either one -- the pocket bag, itself, is that an assembly operation that's done at the Mexican facility?

A That is correct.

* * * * *

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Q Are there any components of the bags, that would be considered fabric components, that were impregnated with resins that required curing?

A Not that I know.

Q In the zipper operations, where you have the zipper material and you also put on it --

A Zipper slider?

Q -- the slider and the stopper at the end, does that involve any material that was impregnated with resins and that required curing?

A Not that I know.

Q The buttonholing operations, did that involve any material that -- did the operation, itself, -- withdrawn.

The buttonholing operation, itself, was that an assembly of two or more solid components?

A Do you consider the thread to be a component?

Q Yes.

A There was thread put into the fabric, so that is an assembly.

Q Was it also a forming operation, where you cut open the buttonhole?

A It was the hole opening, yes.

Q Now, in the pocket opening operation, was there any joinder of two or more solid components?

[266]

A Can you be more explicit -- more specific about a pocket opening?

Q Is there a pocket slashing operation, where you have something that's closed, and one of the machines that are used at the plant has a knife that cuts through and opens the pocket?

A There, there is sewing, so the, so there is an assembly. It is putting pieces together, yes.

Q Not --

THE COURT: That's not his question.

Q-- that's not my question.

THE COURT: Just answer the question.

Q My question is is that, let's say, you finished assembling the pocket.

A Um hmm.

Q Then the next stage is you have to open the pocket, so something can be put into it. It's completely closed. So, you have a pocket cutting or slashing operation.

Is that correct?

A That is correct.

Q In that pocket slashing operation, is there any assembly, any joinder of two or more solid components?

A In that specific -- no, but we, the way we study, we study the operator doing something as of the time

* * * * *

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now.

MR. DAVIS: Well, because it's going to get into cross-examination. I'm trying to save time.

MR. JOFFE: Well, the--

MR. DAVIS: Because I'm going to go through Exhibit 4, where he disagrees with what we're saying.

MR. JOFFE: If it says something different, then it speaks for itself.

MR. DAVIS: All right.

THE COURT: All right, no stip on this.

BY MR. JOFFEE:

Q On number five --

THE COURT: And your testimony is that it is just an assembly.

THE WITNESS: That is correct, and it does not come in a roll.

THE COURT: Testimony, no stip.

A Chop left fly. This one has both. This actually has the sewing of the fly lining to the fly, and at the bottom, it cuts off that roll of band lining.

THE COURT: Excuse me? What does it cut off?

THE WITNESS: The band lining, that is being sewn first? It cuts off the bottom part of it.

THE COURT: Oh, the excess?

THE WITNESS: The excess.

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THE COURT: Like a trimming operation?

THE WITNESS: Like a , whatever you want to call it. It has a knife. After you sew, it has a knife on the side, so all we do, we waste some thread, but we try to do it, cut it at the bottom.

BY MR. JOFFE:

Q Now, if you were to allocate the labor time associated with both the sewing and the other aspect, how would you do that?

A The standards are broken down, on all the steps of this particular operation, and the amount of element of time, as far as the cutting time, would be less than the whole cycle time. Is that what you're asking?

Q Well, yes, but the Judge may decide to divide the time for this step 5, and we need to know how to allocate that.

A Okay, the way you do it is to get back to our standards, where our engineers did it --

Q Well, now I'm asking you. You've seen this operation, haven't you?

A Yes, I have.

Q Okay, I, we've got the information from the standards. I want to know, from your experience, how would you break it down, as far as labor time? Fifty-fifty? Twenty-eighty? It doesn't have to be exact, but we --

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MR. DAVIS: Objection. I object if it's speculation. I don't want him --

THE COURT: I'll give --

MR. DAVIS: -- speculating on times --

MR. JOFFE: It's not --

MR. DAVIS: -- on what occurred five years ago --

THE COURT: -- I'll take his best --

MR. JOFFE: -- no.

MR. DAVIS: -- or six years ago.

THE COURT: -- I'll take his best --

MR. JOFFE: No, he's making --he's --

THE COURT: -- estimate. Have you observed this process being done?

THE WITNESS: Yes, I have.

THE COURT: Have you observed what the operators do when they perform this process?

THE WITNESS: Yes, I have.

THE COURT: What's your best estimate as to the amount of time that the operator takes to do -- now, divide it. You may continue to question.

BY MR. JOFFE:

Q Yes, as far as allocating between the cutting and non-cutting.

[299]

A I would say the cutting of the fly lining would be about five to ten per cent.

Q Okay, thank you. Okay, number six. Wait -- on number five, so the cutting would be five to ten. So, the sewing would be between ninety and ninety-five percent?

A Yes.

Q Okay, number six.

A Number six, supply and handling, is the person that actually gets the supplies to start the process. That means the thread, the cut pieces, and move the bundles around the unit.

Q That doesn't involve the joinder of two pieces of fabric, of two solids --

A That's correct.

Q -- so we can, so that would be no.

A Yes.

Q Okay, number seven?

A Attach hook to left band. That, we had, that is, that is attaching, the joinder of two solids. And also, the actual cutting of the trimming or the ban-roll piece.

Q So, what percentage of the time would you allocate to the cutting, based on your personal experience,

* * * * *

[308]

A Yes.

Q Twenty-eight, joinder of two solids?

A No.

Q Twenty-nine was stipulated to. Thirty, the joinder of two solids?

(Pause)

A Yes.

Q Okay, thirty-one is stipulated to as yes. Thirty-two, joinder of two solids?

A Did you say that thread was considered to be a solid?

Q Yes.

A Yes.

Q Thirty-three, joinder of two solids? That was stipulated to. Thirty-four, joinder of two solids?

(Pause)

A No. Thirty-four is no.

Q Okay, thirty-five, thirty-six, thirty-seven, and thirty-eight were stipulated to. Thirty nine, joinder of two solids?

A There is a joining of two solids, and there is a measurement involved.

Q Okay, what percentage is the measurement?

A About ten percent.

[309]

Q So, that would be ninety per cent joinder and ten per cent non-joinder?

A Yes.

Q Okay, number forty would be no. Correct?

A That's correct.

Q Okay, forty-one, the joinder of two solids?

A Yes.

Q Forty-two, joinder of two solids?

A No.

Q Forty-three, the joinder of two solids?

A Yes.

Q Okay, forty-four through forty-seven --

THE COURT: Stipulated. Forty-eight?

Q -- were stipulated. Forty-eight?

A No.

THE COURT: Okay, the trimming of the threads, he was not going to contest.

THE WITNESS: Right, this trimming --

THE COURT: Is that correct, counselor?

MR. DAVIS: No, this is different. This is after all assembly, where you trim all excess off.

THE COURT: And now you're going to --

MR. DAVIS: In other words, where you -- where [314] that correct?

* * * * *

A Yes. What is -- I can't see it.

Q Among the other fabric components.

A Yes, that's correct.

Q Were those cutting operations necessary in order to do assembly in your plant?

A The cutting operations from Weslaco?

Q Yes.

A That is correct.

Q Would you consider those cutting operations, where you actually take a large bolt of fabric and cut the components to a specific shape, would you consider those incidental to the assembly operation, because they were necessary to be performed before assembly?

A Incidental --

THE COURT: Do you want to rephrase the question? I'm having difficulty in following it, as well.

MR. DAVIS: All right, excuse me. I'm sorry, Your Honor.

THE COURT: I have some difficulty in following it, so perhaps you can make it simpler.

BY MR. DAVIS:

Q Now, you stated earlier with regard to the cutting operations that were performed at your plant, that all of those operations were necessary for assembly. Do you remember that?

[315]

A That is correct, yes.

Q Is it correct to state that all of the cutting operations performed at Weslaco were also necessary for assembly?

A Yes.

Q Now, in the course of your perparing for this case, did you --

THE COURT: Now, wait a minute. Do you want to conclude that? What do you want to draw from that? Both of them were necessary.

MR. DAVIS: Right.

THE COURT: The question is whether the second one was necessarily performed at his plant, is that not true? Or could have been performed in Weslaco?

MR. DAVIS: That's not what he testified to. He said it's necessary for assembly.

THE COURT: Both are necessary for assembly.

MR. DAVIS: Okay, I'll take it one step further.

THE COURT: I'm just trying to understand it.

MR. DAVIS: All right.

BY MR. DAVIS:

Q Are there Haggar plants, today, where you have the cutting operations, such as performed in Weslaco, and

* * * * *

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MR. DAVIS: We will. That's what I'm trying to do, among other things.

THE COURT: He's saying he's using your witness as his witness, is what he's telling you.

MR. DAVIS: That's all --

MR. JOFFE: Major or minor is, is not evidence of anything.

MR. DAVIS: He deals with time. That's his job for --

MR. JOFFE: No, no --

MR. DAVIS: -- who knows how many years.

MR. JOFFE: We have the --

THE COURT: No, that's not the argument. Ask your question. What is the question? Do you consider attaching what to what --

BY MR. DAVIS:

Q Do you consider the first operation, sew zipper to left fly, to be a major operation?

A In regards to what? Would that be an important operation? Yes.

Q Look, may -- all right. It's an important operation, okay?

A It's part of assembly. Every part of the assembly is important to us and it's a major operation. Everything --

[327]

Q And there --

A -- is, and we don't classify it as major or minor. Everything is the same operation for us.

THE COURT: You can't have a pair of pants without a fly, counselor. Go ahead, next.

MR. DAVIS: That's not true, Your Honor.

THE COURT: You can, but then I would have to do further exploration, but go ahead.

BY MR. DAVIS:

Q Now, would you consider, for "Prestige" pants, given your use of the term, would you consider the curing operation to be major, then?

MR. JOFFE: There, again, I'm going to object to the question. It calls for a legal conclusion, Your Honor.

MR. DAVIS: That's not true. It's a word in the English dictionary.

THE COURT: Now, "major" may have several different connotations in the dictionary. I'm sure if you get a dictionary out, you might find five or six variants of it.

MR. JOFFE: Well, the *Mast* test is minor, whether it's minor. So, asking if it's major --

THE COURT: I will not accept that question in the context of *Mast*. The Court will decide that issue.

[328]

MR. DAVIS: I understand that completely, Your Honor. I was -- I need some leeway in this area.

THE COURT: All right, but counsel is concerned that Mr. Davis is trying to get something in the record which he will later use within the context, claiming that --

MR. DAVIS: But Your Honor can judge that --

THE COURT: -- their witness said it was major; therefore -- he will testify to a fly being major, cuffs being major, everything being major. But, within the context of the law, as to whether or not it is eligible, those things alone will not exclude them.

MR. DAVIS: I understand that, Your Honor.

THE COURT: Within the major-minor context.

MR. DAVIS: I understand that, Your Honor.

THE COURT: Well, then, where are we going?

MR. DAVIS: If I can have some leeway with this witness, it will be -- it won't be long. His objection is to the use of the term "major." The witness already explained how he uses it. So, right then and there, that waters down his argument entirely.

THE COURT: Okay. Go ahead. I'll give you a little leeway, to see where you're going.

[329]

THE WITNESS: Can you -- can you say the question again?

THE COURT: Do you have a question?

BY MR. DAVIS:

Q All right, in the manner in which you described the sew zipper to left fly as a major operation, do you remember answering that question, --

A What I did --

Q -- on why you said it was major?

A -- I, that, what I --

THE COURT: You said major you considered important.

MR. DAVIS: Right.

THE COURT: Let's use his term, "important."

THE WITNESS: Well, I also did say that we, we never classify our operations as major or minor.

MR. DAVIS: That -- that's also -- that's all in the record.

THE COURT: All right, so, just get away, so everybody is happy, --

BY MR. DAVIS:

Q Okay, now, is oven curing --

THE COURT: -- important to the procedure. We'll use that language.

Q All right.

[330]

Is oven curing on the 245 pants in issue in this case important to the procedure, in the same sense that sew zipper to left fly is important?

A If it's part of the assembly that I was asked to do, it is important.

Q But is the curing operation part of the assembly?

A Depends on the product we're working on. If it is part of the assembly, that has been stated, to be baked, it is important.

Q Wasn't it stipulated that all assembly occurs before pressing and --

THE COURT: Counsel, we went through this before. When he was using, he was considering the context of work done at his plant, they consider it as part of the assembly. You have a stipulation that they're fully assembled before the baking process. How many times do you have to go into this?

MR. DAVIS: The -- the reason I'm going into it is now he's telling me it's not part, it is part of the assembly. In his deposition he said it's not part of the assembly.

THE COURT: Well, you hear a lot of things, counsel. You've got stipulation. He thinks it may be or [331] may not be.

MR. DAVIS: All right.

THE COURT: Depending on the context in which it's used.

MR. DAVIS: Fine.

THE COURT: I'm not going to decide this case on what he thinks assembly is, or the stipulation. Go ahead.

MR. DAVIS: Okay, thank you, Your Honor.

THE COURT: As far as -- I'll take it into consideration on credibility. Next.

(Pause)

BY MR. DAVIS:

Q Well, I didn't get his answer, so in the context of the operations that we discussed, the sew zipper to left fly, would the curing process also be considered a major operation --

THE COURT: Important. We're using his term and definition --

Q I'm sorry, important.

THE COURT: -- and he said yes.

A Yes.

Q Okay. In terms of --

[332]

THE COURT: Is cutting off threads important, too?

THE WITNESS: Yes.

THE COURT: Go ahead. He thinks everything is important, to get the completely finished product. Next.

BY MR. DAVIS:

Q In terms of time and cost comparisons, based upon your experience as an industrial engineer, is the sew zipper to left fly an important or significant operation?

A In terms of --

Q Time and cost, as compared to the time to make the whole pants or the cost of the whole pants.

A In com --

Q Just the sew zipper to left fly, would you consider that --

A It would be a very small part of the whole --

Q A very, very small part.

A Yes.

Q Okay. (Pause) Now, you stated on operation number four, that there was no cutting done there. It was only the joinder of two or more components?

A Yes.

* * * * *

[338]

Q For Unit 11 --

A -- purposes.

Q For Unit 11. Is that correct?

A That is correct, but it was never --

Q And Unit 11 is a sub-assembly unit.

A It's a preparation but it was never done in Unit 11.

Q Excuse Me?

A It was never performed in Unit 11.

Q I'm not talking about at your plant.

A No, I'm talking about any plant in Haggar Company.

THE COURT: What is Unit 11? Is that something in this plant?

THE WITNESS: It's the fly area.

MR. DAVIS: Unit 11 is uniform in Haggar.

THE COURT: It's all flys?

THE WITNESS: Yes.

THE COURT: Okay. Now, he's testified, I think clearly and distinctly, unless we really want to go into this and it seems some value to you, that he gets these things cut, pre-cut --

MR. DAVIS: Right.

* * * * *

[456]

THE COURT: Give it to me.

MR. DAVIS: All right. (Pause) Beginning at 38. One can have a fully assembled pair of pants without the pressing operation.

THE COURT: I agree with that.

MR. DAVIS: That means that --

THE COURT: The question is whether another process would logically be done during the assembly.

MR. DAVIS: Your Honor, --

THE COURT: I agree with you. It's stipulated to. I don't think anyone is disputing that. The question now is whether or not the operation -- you're saying it was not performed during assembly.

MR. DAVIS: That's correct.

THE COURT: It's performed after assembly. I will say that.

MR. DAVIS: That's what this criteria says. Will logically perform during assembly.

THE COURT: This is not apply.

MR. DAVIS: Excuse me?

THE COURT: This does not apply. Parties concede that it's not. No application. It's clearly stated that's its performed after assembly.

MR. DAVIS: Right.

[457]

THE COURT: That's stipulated. It was not performed during assembly. It doesn't apply. The criteria does not apply. There was nothing performed during assembly as far as the oven baking process is concerned, so this criteria does not apply. Therefore, it's neither for or against the government or for or against the party on this criteria. It has no application to the facts of this case.

MR. JOFFE: Your Honor, I don't read the mass test to be that narrow to define assembly to mean to the point of the physical completion of the garment. I would interpret it to mean the entire operation, the assembly operation at the facility. I think it has to be read in that context.

THE COURT: I think when you take it out of the context of four, doesn't four cover that?

MR. JOFFE: I think three and four overlap.

THE COURT: Doesn't four cover in this case while three has no application of the dispute in this case?

MR. DAVIS: If I could just have a minute to discuss the mass --

THE COURT: Okay, good.

MR. JOFFE Your Honor, by way of example, pressing, which is acceptable, occurs in time after the assembly but it is regarded as related to the assembly.

[458]

MR. DAVIS: Where does it say it's related to the assembly?

THE COURT: He's saying that it was not during the assembly. You can see that the assembly process was completed when the pressing was done. This may not have an application, but certainly you have to consider whether or not it was an economic or practical consideration dictate that the operation be performed concurrently or consecutively or near the time of assembly.

I'm not bound by the exact words.

MR. DAVIS: I understand that, Your Honor, but let's look at the criteria we're discussing. I quote, in discussing the criteria, whether the operation is solely related to assembly that they were logically performed during assembly. Then it explains that criteria. Not wholly or in proximity, but closely related to the assembly process. Both involve taking needle and thread to fabric as in the assembly process. Both are done with special sewing machines.

The relationship of these operations of assembly is further demonstrated by the availability of alternative closers and packers which may be obviously incorporated in pants through operations which are solely assembly operations.

Then they have an analogy of assembly equipment. There's an analogy with the process of assembly.

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THE COURT: This was not --

MR. DAVIS: That is what they were saying.

THE COURT: This was not logically performed during assembly. It was not performed during assembly. I'm saying, this criteria has no application to our case.

MR. DAVIS: The government will go one step further. Mass. The decision itself defines what is meant by relation to assembly, even if during assembly. By relation to assembly at the type of process and the type of machinery used. It's clearly unrelated to assembly here because there is absolutely no connection between curing and an assembly process. They don't use the same type of machines. They don't use the same type of process.

THE COURT: I'm not going to -- criteria three does not apply in this case. It clearly is not done during assembly.

MR. DAVIS: If it doesn't apply, then it means it's --

THE COURT: If it doesn't apply, then it means it doesn't apply. I have to balance in the other factors.

MR. DAVIS: I understand that.

THE COURT: That's all I'm saying.

The fourth one is whether the economic or other practical considerations dictate that the operation be formed concurrently with assembly.

* * * * *

[461]

The way that it's done now is that it's shipped from Mexico to distribution centers. In addition, there would be a time delay created by doing it in the United States which affects their economic and marketing considerations.

Mr. Bracken discussed the technical reasons why it would be less advantageous and less economically beneficial to do it in the United States. Because of the curing operation, there is an inadvertent curing that starts --

THE COURT: You cannot use that because you have an agreement. I've already ruled that you have an agreement.

Although, if you won't accept this, you may want to couch it in terms of not curing. I accept the stipulation. The curing process is oven baking. I will eliminate that.

MR. JOFFE: I think the point is not pressing and curing, but that --

THE COURT: I'm going to disregard it because the only curing process is that. He did not say, but he may have meant -- I'm not going to find it in the evidence. Somehow something happened there that started a reaction. I disregard the evidence because I take the stipulation.

In other words, in summary, what you're telling now is they have testimony on this record which states that [482] reversible.

MR. DAVIS: Not on the language differences, Your Honor. Not on these differences.

THE COURT: That's why you disclose it.

MR. DAVIS: Crease retention and surface flatness are very important to Haggar in manufacturing, advertising and marketing these pants since they are important to the consumer. If consumers purchase pants that do not have proper crease retention or surface flatness, they have returned them for improper performance.

That question was read -- my recollection, verbatim --

THE COURT: What do you say about that? Agreed. There's no problem, then, is there. Let's get it down. It's agreed. I don't know how it's relevant to anything here that we need it for, but go ahead.

MR. DAVIS: Haggar is very strict regarding it's standards and directions to manufacturing facilities in order to insure surface flatness and crease retention.

THE COURT: Haggar is not going to dispute that.

MR. DAVIS: The proper pressing techniques are absolutely essential to crease retention and surface flatness.

THE COURT: Do you agree with that?

MR. JOFFE: Could you read it one more time?

[483]

MR. DAVIS: The proper pressing techniques are absolutely essential to crease retention and surface flatness.

MR. JOFFE: Fine.

THE COURT: We can just take this off the recording, can't we?

Next?

MR. DAVIS: If Haggar had merely assembled these pants without either the pressing or the oven baking operations, Haggar would not have sold these pants as a prestige line pants, as they would not have met the performance requirements.

THE COURT: I assume all pants have to be pressed or you won't sell them as prestige pants, is that correct?

MR. JOFFE: It's not correct. Jeans. There are many --

MR. DAVIS: These pants.

THE COURT: I'm sorry. The models in question are the ones we're referring to.

MR. JOFFE: Modify it to the models in question and we'll agree.

MR. DAVIS: It said prestige.

THE COURT: The questions are not important to the determination of the case. It would be much simpler if we just forgot them. They are not an issue. It's not a [484] question --

MR. DAVIS: The answer was important. The difference that they're raising is not important.

If Haggar had merely assembled the oven baked pants without either the pressing or the oven baking,

Haggar would not have sold these pants as a prestige line pants, as they would not have met the performance requirements.

MR. JOFFE: Agreed. Next.

MR. DAVIS: There are Haggar standards for the appearance and the placement of the crease. If the crease was not properly placed in the proper area or the crease is not proper because of improper pressing or oven baking, Haggar never sold those pants as a prestige line pants because it would be considered all quality.

THE COURT: Is that correct?

MR. JOFFE: Agreed.

MR. DAVIS: If the oven baking was properly done and the defect was caused by the pressing prior to baking, than the error was irrevocable.

If the oven baking was properly done, and the defect was caused by the pressing prior to baking, than the error was irrevocable.

THE COURT: Agreed.

MR. DAVIS: The oven baking process is the final process that causes these pants, if everything else is done [485] property [*sic*], to meet the design and quality assurance requirements of Haggar for that pants to be sold as a prestige line pants.

MR. JOFFE: There are other events --

MR. DAVIS: You didn't hear the question.

THE COURT: Did they sell them without their tags? Read the question.

MR. DAVIS: The oven baking process is the final process that causes these pants, if everything else was done properly, to meet the design and quality assurance requirements of Haggar for that pants to be sold as prestige line pants.

THE COURT: Okay. Agreed.

MR. DAVIS: For the pants in issue, the d-sired crease to be placed in these pants is accomplished by the combination of the pressing and baking. The desired positioning of the crease and its appearance are creaded by the pressing operation.

THE COURT: Agreed.

MR. DAVIS: In order to retain the desired crease, Haggar has set forth standards for oven baking this type of garment.

THE COURT: Agreed.

MR. DAVIS: You can have two pair of pants in which the identical assembly process is performed. If one is [486] properly cured and the other is not, the first will be sold as a first quality prestige pant while the second would never be sold as a prestige pant.

THE COURT: Agreed.

MR. DAVIS: He said that it would not have the prestige label on it. It would be sold as a second. I'm going to get to that part coming now.

THE COURT: I'm not going to disagree with it. You're not going to sell defective pants as prestige pants, but go ahead. Read it again.

MR. DAVIS: You can have two pair of pants in which the identical assembly process is performed. If one is properly cured and the other is not, the first will be sold as a first quality prestige pants while the second would never be sold as a prestige pants. It may be sold as an off quality with discounts ranging from 20 to 25% at Haggar's level of sale to 25 to 30% at the retail level.

THE COURT: That could vary by market considerations.

Let's take it in pieces. Are you going to sell prestige pants if it's improperly cured?

MR. JOFFE: No.

THE COURT: Now, that portion of it --

MR. JOFFE: He said, he did testify that generally at the Haggar level, there is a 20 to 25 --

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don't know if they all agreed, but it was a business plan of the corporation, to advertise that they were wrinkle free.

MR. DAVIS: That was just part of the -- the business plan is not the same as marketing and advertising plans.

THE COURT: I don't care if you have business plans, marketing, analysis. It's important. It's wrinkle free. What else do you need?

MR. DAVIS: That any portion of the assembly process was not part of the business plan or the ad or marketing plans.

That was testified to by Mr. Bracken.

MR. JOFFE: I'm not sure what that means, Your Honor.

THE COURT: I'm not sure what that means, either. In other words, they didn't advertise that aspect. That is what he is saying. They didn't advertise the fact that they double stitched something or single stitched it or double seamed. What they did advertise was the fact that this was wrinkle free. Yes, I find that -- there's no testimony on the record that they advertised otherwise.

Is that part of the record that they did not advertise other aspects?

MR. DAVIS: Yes. Mr. Bracken testified.

THE COURT: What did he testify to?

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MR. DAVIS: I don't care if he said it was in writing or not. Based upon his deposition of what a business plan is, it shows what it means and that it's significant.

He stated that there was a business plan, that the business plan discussed the wrinkle resistant and permanent press aspect of these pants. They did not discuss the assembly aspects of these pants. And that the business plan was reviewed from the top of the corporation down. Therefore, the area of wrinkle resistant to these pants permeated the entire corporate structure.

MR. JOFFE: That's the purpose of this.

MR. DAVIS: If he doesn't want to stipulate to it, fine. We have the testimony on record.

THE COURT: Give it to me and I say so what, what about it? What relevance --

MR. DAVIS: In my opinion, and I will argue, that the mass factors are not the beginning and the end of determining what is major and what is incidental. The Courts have said so, including Your Honor. You don't have to look at cost comparisons and time comparisons. Sometimes you can have --

THE COURT: I will find now that the issue of wrinkle resistant was extremely important to the company, in the manufacture and sales and promotion of these garments.

I find that. [500] disputed, is it?

MR. JOFFE: No.

MR. DAVIS: Will you make the finding, then, that this aspect, the curing aspect of these type of pants to get this performance requirements was something that permeated the corporate structure in planning the manufacturing and selling --

THE COURT: Permeating. When something permeates a corporate structure, they don't go to sleep at night, they think about it. It was important to them. That's what I'm going to find.

MR. DAVIS: I'll just take care of it in my brief, that's all, Your Honor.

THE COURT: I find it's an important factor whether or not the bookkeeper, whether or not the secretary, whether or not the entire structure, whether or not the First Vice President, the Second Vice President, Third Vice President, all had the consideration, I don't know. It was an important factor to the corporation and certainly to its CED, who testified here. I can make that finding without dispute. Is that correct? It's agreed to. There's just too many of these things.

MR. DAVIS: All right, Your Honor.

I have others, but it would take an awful long time to go through it.

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[503]

MR. DAVIS: Lines 5 through 7.

THE COURT: Five through 7?

MR. DAVIS: Five through 7. The oven baking process is not at all related to assembly.

THE COURT: I'm not going to make that finding because it's already been agreed to. Correct? It's following the assembly process. The assembly process --

MR. DAVIS: It's not at all related to assembly. There's a difference.

THE COURT: Okay.

MR. JOFFE: We can't agree to it in that context.

THE COURT: You tell me why it's related to the assembly process.

MR. DAVIS: I think it's more important that he show something in the evidence of record --

THE COURT: That's what I'm asking for.

MR. JOFFE: I think it goes to the definition of related, Your Honor.

MR. DAVIS: That is what the witness said.

THE COURT: Just give me -- my understanding of the case thus far is that assembly is complete at the time or before the pressing out takes place, right? Do the parties agree to that? Assembly is complete.

Tell me why you say -- is there anything in the record, number one, that says that this process is in some

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[505]

The question here is, how is pressing related to the assembly process?

MR. JOFFE: I think that the relationship -- the phrase related is not restricted to merely --

THE COURT: Tell me how you define it so that I can find -- everything, I assume, is related to the object that's being manufactured.

MR. JOFFE: I'm not sure how the phrase is being used because you've already ruled on one of the mass factors. You said that there was no relationship.

THE COURT: No relationship --

MR. JOFFE: Why are we even discussing it?

THE COURT: He agreed to that factor, there is no relationship.

MR. JOFFE: Fine.

THE COURT: Next?

MR. JOFFE: I have no problem with that.

(Pause)

THE COURT: I now find that it's not related to the assembly process.

MR. DAVIS: In reality, there is no relationship of the pressing to the assembly of the pants.

THE COURT: Again, my response would be the same: do you have some other argument or something else in the record that would --

[506]

MR. DAVIS: That would be consistent with --

THE COURT: Pressing is not related to the assembly process. It is something that is done after assembly. Perhaps it might be because it's the best time to do it, but it's not related to the assembly process.

MR. DAVIS: Your Honor, I understand that you're making these findings, but I don't want to concede these for the purposes of the record. We don't agree with --

THE COURT: Any finding I make, when it's not with the consent of the parties, means that if I'm in error and there's no basis upon which I made my finding, you can

argue that to the Appellate Court. Certainly. If the decision is adverse to you ultimately. I'm not pre-judging that.

MR. DAVIS: The trim of the pants, operations 6747 and 6757, of plaintiff's Exhibit 3, have no relation to assembly. It's a matter of appearance. It's R145, 146. In particular, R146 lines 5 through 8.

I'll read it verbatim: --

THE COURT: 146?

MR. DAVIS: Starting at 145 to get the background so we know what we're talking about. 145 at line 18: Now, in contrast, when you have the trim operations, like operation 6747 and 6757, do you see which ones I'm talking about? The answer, yes. The question, while those themselves are not assembly operations, they do have a

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[511]

THE COURT: What findings are those?

MR. DAVIS: There's a difference between being related to the assembly process and being part of the assembly process. You just found it's part of the assembly --

THE COURT: I'll find it's related to the assembly process. You can then add it on the other side of your closing. You'll probably argue that later.

It's related to the assembly process. I found the pressing and the other was not.

That leaves your argument in fact as to which side you're going to put it on.

(Pause)

Counsel, that still leaves open the over arching issue as to whether or not I have to decide whether the assembly process has to be construed by me as being so narrow as merely stitching and doing absolutely nothing after the stitching made.

MR. DAVIS: I didn't say that, Your Honor. There are nuances in this that I would prefer to leave to the brief.

THE COURT: In other words, like the fact that you're trimming, whether or not that is the assembly process itself. I might construe it also to include that. It's something I would like argument on, whether or not threads

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[545]

context?

THE COURT: Okay.

MR. JOFFE: For economic and practical considerations, Haggar oven bakes immediately following assembly and pressing but prior to the attachment of hang tags and other items packing and shipping. Otherwise, additional cost and expenses would be incurred in that these operations would have to be duplicated.

MR. DAVIS: Which operations?

MR. JOFFE: The packing and shipping.

THE COURT: The garments would have to be repacked and reshipped.

MR. DAVIS: We would stipulate that if the pressing and oven baking occurred in the United States, that they would first have to be packed and shipped form Mexico to the United States and then after oven baking and pressing, they would have to be repacked and reshipped to the distribution center.

THE COURT: Additional costs would be incurred by these processes.

MR. DAVIS: That's correct.

THE COURT: Agreed to.

Next.

MR. JOFFE: The initiation of curing in the pressing operations is inadvertent.

[546]

THE COURT: I thought I ruled that we were accepting the stipulation. The curing process is done by the oven baking procedure. I'm disregarding testimony on that.

MR. JOFFE: Concerning the duplication of costs, I would also like to state that in addition, Haggar would have to establish another U.S. operation, create another additional work shift and incur additional labor costs.

MR. DAVIS: I will not agree to that, that they have to create an additional U.S. operation. I will agree to that if the –

THE COURT: Additional facilities would have to be made available. I believe his testimony is to the effect that if this is not done in Mexico, there is not sufficient plant

in the United States at the present time to perform these functions.

MR. DAVIS: And that they would have to add an extra work shift.

THE COURT: And add another work shift.

MR. DAVIS: That means -- it's either one or both. They don't have to add more facilities if they add an extra work shift. Once you add an extra work shift, you have the facility.

THE COURT: Do we agree to that?

MR. JOFFE: Yes.

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THE COURT: Agreed to. I'll ask you to repeat it, you've got to have the language down.

MR. DAVIS: It is agreed that if, based upon the testimony on record, that if the oven baking and pressing are not done in Mexico for all these plants, but they were assembled in Mexico and then shipped on the United States for oven baking and pressing, that an additional work shift would have to be made to accommodate the oven baking and pressing in the United States at an additional cost.

MR. JOFFE: And additional labor cost would be incurred.

MR. DAVIS: Yes. Labor costs, additional labor costs.

Withdrawn. I take that back. They would save the labor costs in Mexico.

THE COURT: At the rate of --

MR. JOFFE: It would be in excess of --

THE COURT: -- the United States. Potentially in excess.

Do you agree with that? The Court takes judicial notice that the rates in Mexico and the rates in the United States are substantially different.

MR. DAVIS: I don't know that that --

THE COURT: I think that's a commonly known fact.

MR. DAVIS: I'll do, on occasion involving

CERTIFICATION OF SERVICE BY MAIL

SAUL DAVIS certifies that I am an attorney in the office of the Assistant Attorney General, Civil Division, Commercial Litigation Branch, International Trade Field Office, with offices located at 26 Federal Plaza, New York, NY 10278, and that on May 15, 1997, on behalf of the United States, defendant-appellant herein, I caused the Joint Appendix in Appeal No. 97-1002, to be served upon:

Edward M. Joffe, Esq.
Sandler, Travis & Rosenberg, P.A.
5200 Blue Lagoon Drive, Suite 600
Miami, Florida 33126-2022

attorney(s) for the plaintiff-appellee herein, by the deposit of two copies thereof in a United States mail receptacle, properly enclosed in a securely closed envelope, duly franked or postage prepaid, addressed to said attorney(s) as above indicated.

/s/ _____

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